SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 219

OFFICIAL REPORT
(HANSARD)

Tuesday, June 12, 2018

The Honourable GEORGE J. FUREY,
Speaker

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Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

Published by the Senate
Available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, June 12, 2018

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, as I mentioned yesterday, this week we are paying tribute to our departing pages.

Today, we pay tribute to Vincent Ingenito.

[*Translation*]

Vincent Ingenito represents Gatineau, Quebec. He just finished his third year of a bachelor's degree in political science at the University of Ottawa. Vincent is delighted to have represented Gatineau, and he feels privileged to have served as Chief Page this year. He wants to thank everyone he met in the Senate for making this an unforgettable experience.

Thank you very much, Vincent.

Yue Yun is proud to represent Montreal, Quebec. She really appreciated the opportunity to work in the Senate. She wants to thank the senators and staff for this amazing experience. She is graduating from the University of Ottawa this year with a degree in public administration and political science and hopes to pursue a career in the public service.

Thank you very much.

[*English*]

NATIONAL BLOOD DONOR WEEK

TENTH ANNIVERSARY

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, this year marks the tenth anniversary of the National Blood Donor Week Act, legislation that I sponsored to recognize and celebrate blood donors from across the country who continue to selflessly give life. It is hard to believe that it was 10 years ago.

The World Health Organization declared June 14 as World Blood Donor Day to raise awareness of the ongoing need for blood donors around the globe. In passing the legislation, Canada took a lead role in expanding upon the very important need for donors.

National Blood Donor Week 2018 offers a week-long opportunity to thank donors across the country for their life-saving contributions, including nearly 400,000 donors who gave blood this past year. Most important, I believe it reminds us, and all Canadians, that more blood donors are needed. Even though half of the Canadian population is eligible to donate blood, fewer than 4 per cent of eligible donors actually donate. These people save lives, and we need more people to do so.

So, honourable senators, this week I am asking you for your participation during National Blood Donor Week, whether it be donating blood or encouraging someone else to donate blood. In fact, outside tomorrow, Wednesday, June 13, right here on Parliament Hill, Canadian Blood Services will be hosting a blood-typing event from 10 a.m. to 2 p.m. I encourage you all to attend and have your blood typed, see if it's a rare one, so that perhaps you may be able to also save a life. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of His Excellency Per Sjögren, Ambassador of Sweden to Canada and Mrs. Astrid Sjögren. They are the guests of the Honourable Senator McPhedran.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

COME FROM AWAY

Hon. Fabian Manning: Today, I am pleased to present Chapter 35 of "Telling Our Story."

I am confident that we all remember where we were on September 11, 2001, the day the world stood still. The four co-ordinated terrorist attacks orchestrated by al Qaeda against the United States resulted in the deaths of 2,977 people and immeasurable destruction and pain in New York City, Washington, D.C., and near Shanksville, Pennsylvania.

On that horrific morning, the U.S. Federal Aviation Administration shut down its airspace, forcing over 4,000 planes to land at the nearest airports. Inbound flights from Europe were diverted to Canada. In every dark cloud, there is a silver lining: Thirty-nine planes were forced to land at Gander International Airport in Newfoundland and Labrador, carrying 6,579 passengers and crew.

The town of Gander, with a population of approximately 10,000 people, was offered an extraordinary challenge. As always, Newfoundlanders and Labradorians rose to the task and did what needed to be done. After sitting on the runway for over five hours, the "come-from-aways" were driven to Salvation Army centres, churches, schools and community centres in Gander and several neighbouring towns.

In a world fraught with division, terrorism and hate, these perfect strangers were welcomed with open hands and hearts and were about to experience kindness and generosity never before seen, because kindness is woven into the very fabric of the people of my province. We don't know any other way to live.

The former Mayor of Gander, Claude Elliott, summed it up best, I do believe, in his comment:

> What we consider the most simple thing in life is to help people. You're not supposed to look at people's color, their religion, their sexual orientation — you look at them as people.

Families opened up their homes to strangers and gave freely of their food, clothing and anything else that was required to assist the passengers. Robert Steuber of St. Louis, who was stranded with his wife and elderly father-in-law, said afterward that he never felt like a stranger. He went on to say, "That whole community is the poster child for how hospitality and just a sheer act of humanity should be . . . ."

Colleagues, this is a wonderful story of human kindness and Newfoundland and Labrador hospitality at its best. This story has grown into the multi-award-winning Broadway hit musical entitled *Come From Away*. I would like to tell you more about that, as well; however, due to time constraints, you will have to stay tuned for the next chapter of "Telling our Story."

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Jeffrey Howe, Mrs. Barbara Howe, Mr. Frank Smyth, Mrs. Anne Marie Smyth, Ms. Elizabeth Myler, Mr. Gerry Cook, Mrs. Louise Cook, Ms. Donna Adams and Mrs. Kelly Adams.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

ED BURTYNSKY

CONGRATULATIONS ON PHOTO LONDON'S 2018 MASTER OF PHOTOGRAPHY HONOUR

Hon. Patricia Bovey: Colleagues, when one travels, patriotic pride swells within. Canada's international position is high; it certainly was last month.

• (1410)

All of the 2018 Governor General's Performing Arts Award recipients, to whom I extend my heartfelt congratulations, are making their mark globally.

Canadian artists of all disciplines were on the world stage making their truly meaningful mark in Britain. I particularly congratulate Toronto's fine art photographer Ed Burtynsky, recipient of Photo London's 2018 Master of Photography honour. This much-deserved tribute included an exhibition of his recent work at Somerset House.

I learned of his receiving the award not from the Canadian press but from a poster in London, and this award is the biggest and most important in his field around the globe. I'm glad I was in London when I saw that poster. Burtynsky has exhibited globally, his subjects emanate from all parts, and his works are in international public, corporate and private collections.

This innovator continually stretches the properties of fine art photography technically and in subject. Capturing detail and texture in his landscape photos, he conveys the minute within his compelling macro vistas. Burtynsky's message is a timely, an urgent call to action. His beautiful images carry a tough message — our planet and our impact on it.

Photo London's directors said:

> Ed is one of the great image makers of our times and a great champion of photography and sustainability . . . .

Oil, mining and marble quarries preoccupy him; their extraction, transport and use. Burtynsky's overarching theme? Respect for both the planet and our human needs. He says:

> We can't all live off the land, so we're kind of in a pickle . . . . We've had five great extinctions. Now our species is having a similar effect – we are the equivalent of a meteor impact.

The May 13 *London Times* said his Anthropocene project shows "the sublime qualities of human-marked landscapes and the unsettling reality of sweeping resource depletion." He notes the "proposed name [is] for our current geological age, an age on which human activity has had a profound and still ultimately unknown impact."

Other Canadian artists of all disciplines have also made important global contributions. Ballet BC's London debut was this spring; Country singer Donovan Woods, designated "an amazing and under-recognized Canadian talent," is at the UK Borderlines Festival; Tate Modern has featured Canadian Tamara Henderson's *Out of Body* since early March, dubbing her penetrating and compelling films "imaginative"; FOCUS Wales' 2018 music festival featured 17 emerging Canadian bands, including Indigenous Albertans, nêhiyawak, Quebec's Wake Island and Yukon's Declan O'Donovan.

I salute them all.

SWEDEN

PEACE BUILDING AND STATE BUILDING

Hon. Marilou McPhedran: Honourable senators, the G7 summit just a few days ago reminded us of how crucial diverse allies are to Canada's future. Today I salute one of our valued allies.

On May 7, the Honourable Marie Claude Bibeau, Canada's Minister of International Development and La Francophonie, with Sweden's Deputy Prime Minister Isabella Lövin, also Minister for International Development Cooperation and Climate, announced that Canada will replace Sweden on the International Dialogue on Peacebuilding and Statebuilding as a donor co-chair. As described by Deputy Prime Minister Lövin, a unique platform that gives fragile states and civil society a voice, the international dialogue is an important and strategic platform for more inclusive approaches to peace building and conflict prevention. This is but one of many examples of the alignment and alliance that Canada has with Sweden.

A country with a population of almost 10 million, Sweden's international impact has been far greater than its size, largely due to bold and visionary leadership, women working in respect for partnerships based on shared values with men, anchored by compassion and diplomatic courage.

[*Translation*]

I commend the Swedish government for its systemic approach to reducing gender-based discrimination and violence, which focuses on improving living conditions. As a result, women and children in many areas will be able to realize their rights.

[*English*]

To live their rights.

After launching its feminist foreign policy in 2014, Sweden's leadership is resulting in increased female participation in peace processes in Latin America, Asia, Africa and the Middle East; robust gender equality strategies at development banks, as well as in environment and climate funds; and greater prioritization of the Women, Peace and Security agenda of the United Nations Security Council, where Sweden takes presidency in July.

With Canada's presidency of the G7 for 2018 has come the partnership announced on June 9 at La Malbaie, Quebec, with the European Union, Germany, Japan, the United Kingdom and the World Bank to make "the single largest investment in education for women and girls in crisis and conflict situations" that we have yet seen. These investments will support global action to equip women and girls with the skills needed for the jobs of the future; improve training for teachers to provide curricula for women and girls; improve the quality of available data on women's and girls' education; promote greater coordination between humanitarian and development partners; support developing countries in ethics to provide equal opportunities for girls to complete at least 12 years of quality education.

This fund is open, and more investors are to be announced.

In closing, I want to thank Sweden's Ambassador to Canada, His Excellency Per Sjögren and his wife Astrid for all they have given to Canada and for being with us here today as Ottawa bids them farewell and they prepare to return home to beautiful Stockholm. Thank you, *meegwetch*, *tack*.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a youth community group from Etobicoke, Ontario, called Developing Young Leaders of Tomorrow, Today. They are the guests of the Honourable Senator Bernard.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Chloe Kennedy. She is the granddaughter of the Honourable Senator Hartling.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

COMMISSIONER OF OFFICIAL LANGUAGES

2017-18 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the Annual Report of the Commissioner of Official Languages for the year ended March 31, 2018, pursuant to the *Official Languages Act*, R.S.C. 1985, c. 31 (4th supp.), s. 66.

BUDGET IMPLEMENTATION BILL, 2018, NO. 1

TWENTY-NINTH REPORT OF NATIONAL FINANCE COMMITTEE ON SUBJECT MATTER TABLED

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the twenty-ninth report of the Standing Senate Committee on National Finance, which deals with the subject matter of Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.

(On motion of Senator Mockler, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

EXPORT AND IMPORT PERMITS ACT CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments).

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Harder, bill placed on the Orders of the Day for second reading two days hence.)

• (1420)

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

BUREAU MEETING AND ORDINARY SESSION, JULY 7-11, 2017—REPORT TABLED

Hon. Dennis Dawson: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation at the Bureau Meeting and the 43rd Ordinary Session of the APF, held in Luxembourg, Luxembourg, from July 7to 11, 2017.

BUREAU MEETING, JANUARY 31-FEBRUARY 2, 2018—REPORT TABLED

Hon. Dennis Dawson: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation in the Bureau Meeting of the APF, held in Paris, France, from January 31 to February 2, 2018.

[*English*]

CANADA-UNITED KINGDOM INTER-PARLIAMENTARY ASSOCIATION

BILATERAL VISIT TO LONDON, ENGLAND AND BELFAST, NORTHERN IRELAND, UNITED KINGDOM AND DUBLIN, IRELAND, MARCH 5-9, 2018—REPORT TABLED

Hon. Patricia Bovey: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United Kingdom Inter-Parliamentary Association respecting its participation in the bilateral visit to London and Belfast, United Kingdom and Dublin, Ireland, from March 5 to 9, 2018.

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF EMERGING ISSUES RELATED TO ITS MANDATE AND MINISTERIAL MANDATE LETTERS WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. David Tkachuk: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Transport and Communications be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate an interim report relating to its study on emerging issues related to its mandate and ministerial mandate letters, between July 2 and September 28, 2018, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

QUESTION PERIOD

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

NAFTA NEGOTIATIONS

Hon. Larry W. Smith (Leader of the Opposition): My question is for the Leader of the Government, as I follow up on a question I asked last week on the matter of supply management. Last Thursday, the Prime Minister went to Saguenay to meet with the dairy farmers. Moments after telling them that he would defend supply management in the NAFTA negotiations, the Prime Minister clearly disappointed the farmers when he declined to promise the system of supply management would remain untouched. Our dairy farmers have a right to be worried.

The next day, in an interview with U.S. Secretary of Agriculture Sonny Perdue, it was revealed that the Government of Canada has indeed recently made an offer to allow more dairy imports.

Senator Harder, could you share with us Canada's position or strategy as to what percentage of our dairy sector the Government of Canada has offered as a concession to the United States?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question. I'm afraid I'm going to have to repeat what I said last week. Obviously, it is not in the context of Question Period that governments reveal the state of negotiations. The honourable senator will know that the Prime Minister and ministers directly responsible have said they will continue to defend Canada's interests, both our workers and our sectors that are involved in these negotiations. They've had stakeholder collaborative approaches in terms of information sharing.

The honourable senator will also know that Canada remains open and willing to have a win-win-win negotiation. That clearly is a prospect that benefits Canada. These are tumultuous times, and I think it's important that we all reaffirm the desire to renegotiate changes to the NAFTA that reflect that approach and that come in a timely way so that Canadian stakeholders will know the basis on which the NAFTA will move forward.

Senator Smith: An article in the *National Post* by John Ivison stated last month that sources said,". . . Canada will have to concede more access to the managed dairy sector, in the same way that the market was opened up to the European Union countries under the proposed Trans-Pacific Partnership deal."

The question I'd like to ask you is this: As these negotiations come to some form of conclusion, would it be possible for you to at least give some indication of movement without giving specific facts? For senators who have constituents in their own areas that they feel it's important to communicate with, not to lessen the shock or news to the farm community, but to give a heads-up so that there won't be any surprises.

Senator Harder: Again, I take the honourable senator's question as an opportunity to remind the government of the interest of senators. Let me repeat, though, that it would be unusual for the government to reveal to this chamber or indeed the House of Commons details of an agreement that has not been concluded. The government will continue to brief stakeholders as they have in all of the negotiations, both this government and previous governments, to ensure that there's a degree of awareness of what is at play.

I'd also point out and thank the honourable senator for referencing the TPP agreement, which, as he will know, did, until the election of Mr. Trump, include the Americans and in that framework would have provided a way forward on the issues that he has raised.

PRIME MINISTER'S OFFICE

CONVERSATION WITH PRESIDENT OF THE UNITED STATES

Hon. David Tkachuk: Senator Harder, as you know, everyone in this place, from whichever political stripe, stands united behind Canadian families and workers who will be the primary victims in any trade war with the United States. I personally think the invective coming out of the mouths of certain U.S. administration officials over the weekend was a little over the top. But we do need to try to understand how we got here.

Last week, the Government of Canada revealed that in a telephone call between the Prime Minister and the President of the United States, the President justified removing Canadian tariff exemptions on aluminum and steel by referring — I think in a joking manner, but he could have been serious — to the burning down of the White House in the War of 1812.

Can you table a recording in the Senate of the full conversation between the President and the Prime Minister? If not, can you table a transcript of that conversation?

Hon. Peter Harder (Government Representative in the Senate): I would dearly love to table the transcript of 1812. I thank the honourable senator for his comments and his support, which is joined by most Canadians, standing shoulder to shoulder, all of us, in respect of advancing Canada's interests in the face of some of the comments that have been made.

It would be highly unusual for transcripts or for communications to be reported as the honourable senator would wish, for obvious reasons of confidentiality and for ensuring that future discussions weren't equally suggestive of being transcribed and shared quickly and immediately, even with honourable senators. But I will note the request and ensure it's passed on.

With respect to the tone and the reference to the War of 1812, I don't know whether that was jocular or real, but it is in the context of the security hook on which the American administration has placed the tariffs on aluminum and steel. I guess you could suggest that the events of 1812 had some security interest in Washington, but it's historic and predates the Confederation. All I can say is I do believe that all Canadians, and the Government of Canada certainly, hopes to continue to have a dialogue which can lead to a win-win-win situation.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

G7 LEADERS' COMMUNIQUÉ

Hon. David Tkachuk: I'm still hoping you can check that out. But given all the reasons you gave for not tabling it here, I don't quite understand, then, why the Prime Minister went ahead and revealed the conversation from his point of view as to what happened between him and the President.

• (1430)

As you know, in September 1986, during the free trade negotiations, anything that had happened between Trudeau and Trump has kind of happened before. The Reagan administration, without warning, slapped a 35 per cent tariff on imports of Canadian shakes and shingles. Prime Minister Mulroney, though he kept his cool, sent a firm letter of protest and concluded and managed a free trade agreement in the dispute over softwood lumber.

Senator Harder, can you also confirm that there was an agreement by all the leaders of the G7 to the Charlevoix communiqué prior to the Prime Minister's press conference following the summit?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his multiple questions. Let me do them in reverse order so I don't forget.

It is my understanding that, indeed, all of the leaders of the respective G7 countries agreed to the communiqué in advance of the withdrawal of that agreement by one party.

With respect to the references made to comments the Prime Minister has made, as most prime ministers do in reflecting the state of a conversation or other event, that's a far cry from a transcript, as was earlier requested. It is entirely appropriate for leaders to speak publicly to their citizens and to apprise them of the state of negotiations. It is in that spirit that the Prime Minister and other negotiators have spoken directly to Canadians and certainly directly to the stakeholders.

With regard to the third element of the question, if I could reference that, it's the comment made about former Prime Minister Mulroney. I reflected on Prime Minister Mulroney. Yesterday was the thirtieth anniversary of a particular event I believe we were both at 30 years ago, and it was not coincidental that the book launch for a book on Prime Minister Mulroney's foreign policy was launched last night. Indeed, former Prime Minister Mulroney used the occasion to suggest that the approach Canada has taken in this round is exactly what he would have done and that he also truly and faithfully recorded, as you have, that the negotiations leading to the FTA — more so the FTA than the NAFTA, frankly — had its choppy moments, threats to withdraw and letters and exchanges, but I do think we were dealing in President Reagan with a president who shared the vision.

[*Translation*]

IMMIGRATION, REFUGEES AND CITIZENSHIP

FRANCOPHONE IMMIGRATION POLICY HUB

Hon. Mobina S. B. Jaffer: My question is for the Government Representative in the Senate.

Yesterday, the Minister of Immigration, Refugees and Citizenship, the honourable Ahmed Hussen, announced the creation of a francophone immigration policy hub, at a round table with francophone organizations and related partners.

The hub will ensure a more coordinated approach on francophone immigration policy outside Quebec. I am very happy about this news, but I have some concerns.

Could the Government Representative in the Senate ask Minister Hussen whether the hub will help increase francophone immigration to British Columbia?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for her question. She's quite right that the Minister of Immigration, Refugees and Citizenship, Minister Hussen, made a commitment to supporting and enhancing the vitality of Canada's francophone communities by increasing the number of French-speaking newcomers.

As the senator referenced in her question, the francophone immigration policy hub, which is being established within the department, is the centre that will enhance collaboration among departments, the provinces and territories as well as community stakeholders to develop action plans that put meat on the bones of the commitment the minister has made.

The policy hub is also working to finalize, by October 2018, a departmental strategy to reach the francophone immigration objectives. This objective was supported in the investments that have been co-announced by the Minister of Heritage with Minister Hussen of $40.8 million over five years to support a consolidated francophone integration pathway and coordinating immigration policies and programs to assure French-speaking immigration.

I cannot anticipate for today what the impact of this might be in British Columbia, but I can assure the honourable senator — and all senators who will be interested in this area for their respective regions — that this is a pan-Canadian approach that will involve stakeholders from provinces and communities across Canada.

[*Translation*]

Senator Jaffer: I would also like to know whether Franco-Columbians can expect the francophone immigration policy hub to help strengthen their community.

[*English*]

Senator Harder: Of course, that is the objective of the government and of the minister, and he and his department are working faithfully with the stakeholder groups.

[*Translation*]

CANADIAN HERITAGE

OFFICIAL LANGUAGES—ACCOUNTABILITY AND INTERDEPARTMENTAL COORDINATION

Hon. René Cormier: My question is for the Government Representative in the Senate. In fact, it's for Minister Joly, but I did not get a chance to ask her last week.

As we all know, on March 28, Minister Joly, along with the Prime Minister, announced the Action Plan for Official Languages 2018-2023. This fourth edition of the plan presents the federal government's priorities and all federal funding allocated to official language minority communities across the country. We applaud the minister's initiative and leadership with this action plan, but it sometimes seems that she is going it alone, and that her fellow ministers do not support the implementation of this action plan.

The first action plan in 2003 included a section on accountability and interdepartmental coordination mechanisms. It included a rigorous accountability and coordination framework that was meant to serve as an example for all interdepartmental coordination efforts. It listed the following three issues in government: federal institutions need to be more aware of the spirit and purpose of the Official Languages Act; official language communities must be consulted by federal institutions that have substantial responsibilities for their development; and the government needs a formal interdepartmental coordination mechanism on official languages.

The next two action plans maintained that principle. Why did the government not include a similar section on accountability and interdepartmental coordination in its Action Plan for Official Languages for 2018-23? In light of this absence, how does the minister plan to mobilize the other departments to implement this action plan?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I'm sure he would wish that we had time for the minister to answer it, but let me give the response that I trust the minister would have. That is, to assure you that the plan put forward by the government and the minister on behalf of the government was one very much focused on stakeholders and communities. It is the priority of the government to reflect the needs that are various across the country.

The plan references 30 new measures from a francophone immigration strategy, which I just spoke about, to early childhood education and cultural and educational initiatives to support communities and stakeholders to ensure that official languages continue to thrive over the years to come.

Senators will know that the Action Plan for Official Languages has, in the budgets of this government, proposed nearly $500 million of investment over five years, which includes $400 million as announced in Budget 2018. These are important measures to contribute to a number of initiatives, such as the following: support for training and recruiting teachers to meet the growing need of francophone minority schools and immersion classes, $62.6 million; a free online tool for learning English and French, $12.6 million; and support for minority language education, $14.5 million. Clearly, the government understands that minority communities in every province and territory have specific needs and requirements, and these are designed to ensure the responsive capability.

With respect to the last part of the question of the honourable senator with respect to coordination, the minister, even here in answer to other questions, reflected on what she called the whole-of-government approach to the implementation of the Action Plan for Official Languages, for which she has a leadership role in her departmental responsibilities. But I would want to emphasize that the efforts require the coordination of not only the central agencies, such as the Privy Council Office and the Treasury Board, which has policy responsibility, but specifically involves the following departments, among others: Immigration, Refugees and Citizenship Canada, Employment and Social Development Canada, Innovation, Science and Economic Development, Health Canada and Justice Canada so that all of the tentacles of government are coordinated and aligned under the leadership of the minister responsible.

• (1440)

FISHERIES AND OCEANS

SURF CLAM QUOTA

Hon. Norman E. Doyle: My question for the Leader of the Government in the Senate is a follow-up question to one that I asked last month and the month before and the month before on the awarding of the surf clam quota.

As all senators are aware, the group selected by the Minister of Fisheries and Oceans did not own the vessel at the time that they were awarded the quota, and it was recently reported that this group still has not been able to purchase the ship it needs to begin harvesting because a fully rigged vessel for the surf clam fishery can cost well over $50 million.

Could the government leader please make inquiries and let us know if the Department of Fisheries and Oceans is aware of that development, and, if so, does it have any bearing on the awarding of the quota?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his monthly question on this matter. Let me, first of all, assure him that I'm happy to do as he asks in terms of bringing it to the attention of the ministry concerned and, indeed, the minister. I do, though, want to take the occasion to again emphasize that it is the view of the Government of Canada that this fishery ought to have an important Indigenous focus, and that was the purpose of the RFP and the process that was undertaken to ensure that our Indigenous peoples have a stake in and advantage from this important fishery.

Senator Doyle: The deputy minister of the Fisheries Department appeared before a committee of the House of Commons last week, and she confirmed that it was the minister's decision to award the surf clam quota to the winning bidder.

Leader, you stated last month that it was not the intention of the government to restart the bidding process at this point.

Now, given that the Ethics Commissioner is investigating and given that the group that won the bid has not begun harvesting and given that it has the lowest level of Indigenous participation and given that they can't get a ship, is the government now willing to reconsider?

Senator Harder: Again, I thank the honourable senator for his question. Let me respond, first of all, by saying that, of course, the deputy minister would say that the minister was the decision-maker because the minister is the decision-maker under the act that was, in fact, passed by the Parliament, including this Senate. That's hardly unusual that the minister would exercise ministerial responsibility and accountability for the decision.

With respect to the Ethics Commissioner, the minister responsible has indicated his intention to fully cooperate with the reference that has been made, and he continues to do that. It is my information that the Government of Canada is confident in the decisions that have been made, but, as I indicated earlier, I will bring to the attention of the minister the points raised by the honourable senator.

NATURAL RESOURCES

TRANS MOUNTAIN PIPELINE

Hon. Elizabeth Marshall: My question is for Senator Harder, and it's on the subject of Kinder Morgan and the Trans Mountain pipeline.

My understanding, reading the material that was available, was that the ongoing work is being covered by a loan guarantee from the federal government, and I recently read somewhere that it was being financed by a loan from the federal government.

My question is: Could you confirm whether it's a government guarantee or whether it's being directly financed by the government? If it is a guarantee, can you find out what the amount is of the guarantee?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. She will know that the ultimate decision to agree to the principles of the agreement that was struck rests with the shareholders of the company. I will make inquiries with respect to the specific question being asked and be happy to report back.

Senator Marshall: My understanding also was that there was work ongoing on the pipeline and that the government was either going to cover it by a guarantee or direct financing, but I'm hearing now that there's no work, that there's nothing happening on the pipeline. Could you confirm that? If there is a government guarantee in place, why is there a guarantee in place if no work is being performed? Could you find that out also, please?

Senator Harder: Again, I'm happy to update this chamber. All senators will know that the objective of the agreement was to ensure that this construction season was not lost and, in fact, could be helpful in reaching construction completion as quickly as possible. It was in that context that the ministers involved made the announcement that they did.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: second reading of Bill C-74, followed by all remaining items in the order that they appear on the Order Paper.

BUDGET IMPLEMENTATION BILL, 2018, NO. 1

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator McCallum, for the second reading of Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.

Hon. Percy Mockler: Honourable senators, we are at second reading stage of the debate surrounding Bill C-74. In order to help our committee in its study of the subject matter of Bill C-74, seven other standing and special Senate committees also examined various provisions of the bill that are related to their mandate. The seven committees concerned completed their work and tabled their reports before the May 31 deadline. I encourage you to study their detailed reports and observations.

[*English*]

Honourable senators, we are progressing with Bill C-74. The bill before us today was tabled in the House of Commons on March 27, 2018, entitled, an Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018.

For the record, government requested that the Standing Senate Committee on National Finance be authorized to begin a pre-study of Bill C-74 in advance of the bill coming before the Senate and, in addition, seven committees were asked to report on various clauses of this bill.

The Finance Committee is finalizing its work on the bill, and, as I said earlier, we tabled the report. As we did complete the analysis, I also encourage senators to take time to look at the observations and also to follow up, together with the committees, on certain matters that will reflect discussions on Bill C-74.

For the record, those committees were the following: the Special Senate Committee on the Arctic; the Standing Senate Committee on Banking, Trade and Commerce; the Standing Senate Committee on Foreign Affairs and International Trade; the Standing Senate Committee on Legal and Constitutional Affairs; the Standing Senate Committee on National Security and Defence; the Standing Senate Committee on Energy, the Environment and Natural Resources; and also the Standing Senate Committee on Agriculture and Forestry.

After such a long and diligent pre-study, it will be good to finally have an opportunity to familiarize ourselves with what is being asked under Bill C-74.

This bill outlines the government's planned spending for the coming year. Committee colleagues can often be heard referring to it as the government's fiscal plan or fiscal framework for the coming year. It is a routine undertaking for any government, but there are some significant and, I would even argue, troubling departures in this year's budget, and I want to take this opportunity to highlight some of these concerns.

• (1450)

Most notable, honourable senators, is the context in which this budget arrived before us. Independent, but not completely separate, from this piece of legislation is the government's request for $7 billion in discretionary spending, money which would normally be earmarked to specify programs as approved by Parliament.

But guess what? We did not have that information.

This reference to the appropriation bill and the Estimates is important because of the government's efforts to publicly link a table at the back of Budget 2018 to appropriation and indirectly, of course, to Bill C-74.

Honourable senators, when we come to determine which parts of Bill C-74 we approve, let's remember that measures are being taken to ensure this funding will be entirely discretionary and that it will be Treasury Board ministers who will determine what it is spent on without any parliamentary oversight.

Honourable senators, for those who want to read more on this specific issue, I would draw your attention to a report by the Parliamentary Budget Officer, which can be found on his website.

We must be mindful of a parallel concern with the fiscal plan, and that is the growth of debt and unconstrained spending, honourable senators.

One may recall that, during the 2015 election, the Liberal Party of Canada pledged to cap planned deficit spending at $10 billion and to balance the budget by 2019. The government's annual deficits have been many times greater than promised. As for the plan to return to a balanced budget, it is no longer even seriously contemplated by the government. Canadians are concerned as we move into the future.

As we continue to embrace deficits, let those of us young enough to remember when Paul Martin was Minister of Finance remind ourselves what happened.

Well, when it comes to pay the piper, the first thing the federal government has demonstrated in the past, and the first thing the federal government does, is cut transfers for health care, education, roads and infrastructure in order to help smaller communities from coast to coast to coast on the backs of those hard-working people regardless of where we live. They're the ones that get stuck with this tab, honourable senators.

I want to share with you that the debt is growing despite the additional taxes that the government is imposing on Canadians, so when you consider this bill, take time to understand the impact of the additional tax measures proposed and the subtle administrative changes imposed on small businesses, the very businesses that drive local economies in every community across Canada from coast to coast to coast.

Honourable senators, the committee has heard much of the government's tax proposal and no doubt will hear much more in the days and weeks and months to come. Some of these measures can be found, however, in Part 1 of this bill.

It is very difficult to understand. I cannot understand why the government is insisting on these measures that will disproportionately hurt and impact, for example, the farming community and small businesses across Canada.

We are all well versed in Bill C-45 but not so much with the excise duty framework for cannabis. It can be found in Part 3 of the bill, and I would encourage you to review it.

Of course, there is the carbon tax, which can be found in Part 5 of Bill C-74.

Witnesses appearing before the Senate Energy Committee as part of the pre-study of this bill noted serious concerns related to the implementation of the tax — again, an additional financial burden on average Canadians particularly acute in remote communities, which are now looking at a significant increase in the price of goods.

An Hon. Senator: Hear, hear.

Senator Mockler: Again, the subtle and not-so-subtle changes in this bill will have a direct and lasting impact on all our communities, and we have often heard Senator Patterson bringing his concerns because of the people that he represents about their concerns on the impact of their quality of life.

The Government of Nunavut is still trying to understand the impact carbon pricing will have on them, a report that was long promised, honourable senators. And we are now well versed in the promises this government has made and continues to make when we think about consulting with First Nations, something that continues to trouble the Assembly of First Nations.

First Nations, honourable senators, must be at the table. Prosperity is not a one-way street.

Honourable senators, what is also alarming about the carbon tax is the fact that no impact assessment has been done on how much it will cost the average Canadian family.

When the Minister of Environment and Climate Change was asked about this at the Energy Committee, no answer was forthcoming.

Again, when receiving this section of the bill, reflect on the concerns raised by the most recent IMF report on the state of the Canadian economy and the dark clouds on the horizon. Not knowing the impact this will have on Canadian families is troubling to all Canadians.

Is it not premature to introduce such a tax without this information?

Honourable senators, as you know, the bill was divided among seven different committees, and these committees have all reported on their concerns in the Senate of Canada. I encourage everyone to review these reports and look at their objectives.

As I conclude, the objectives of all those committees will always be focused on helping Canadians to have a better and a clearer vision of the process of government when we talk about budgets.

Honourable senators, our committee has an objective, and this objective will always remain, and it's the TAP system, which is about transparency, accountability and predictability. And I agree with you, Senator Woo: It's about transparency, accountability, predictability and also reliability.

[*Translation*]

Honourable senators, these are the challenges posed by Bill C-74. It will be an honour to study this bill in order to help Canadians understand both the government's current objectives and the impact on the quality of life of Canadians. Thank you.

[*English*]

The Hon. the Speaker *pro tempore*: Are honourable senators ready for the question?

Hon. Dennis Glen Patterson: I would like to speak to the report.

The Hon. the Speaker *pro tempore*: On debate, Senator Patterson.

Senator Patterson: Thank you, Your Honour. I would like to thank the Chair of the Finance Committee for drawing attention to the special situation that the residents of my region face in connection with Bill C-74, and particularly with respect to the greenhouse gas emissions act.

• (1500)

I would like to emphasize the report of the Standing Committee on Energy, Environment and Natural Resources which noted the concern of committee members that carbon pricing would have a disproportionate impact on many northern and remote communities, many of which have no economic or technical alternatives to diesel for heating and electricity generation.

I am quoting from the report:

> On this subject, the Minister of Environment and Climate Change Canada assured members that the federal government committed under the Pan-Canadian Framework on Clean Growth and Climate Change to working with the territories to find solutions that address their unique circumstances, including high costs of living and of energy, challenges with food security and emerging economies.

Colleagues, the Premier of Nunavut signed the Pan-Canadian Framework on Clean Growth and Climate Change in good faith. Nunavut and the other territories wanted to do their part to contribute to a national strategy to deal with climate change, which, of course, impacts the northern regions perhaps more than other regions in this country.

So they entered into the climate change framework and signed it in good faith. The Premier of Nunavut, Premier Taptuna at the time, told me that he and the other territorial premiers were given assurances by the Prime Minister himself that the special, unique circumstances of the northern territories would be considered moving forward.

I would respectfully submit, colleagues, that no other region in the country has more at stake and can be impacted more than my region of Nunavut, and I'm the sole representative of Nunavut in this chamber. In Yukon, which has a large hydro dam in Whitehorse, and in the Northwest Territories, which has two hydro dams, both of them old facilities, but nonetheless producing clean, affordable power, the impact is less severe than in Nunavut.

But in Nunavut, as the Government of Nunavut said in its submission to the committee:

> Each of Nunavut's 25 communities is remote and isolated. Unlike any other jurisdiction in Canada, no community in Nunavut is connected by road or rail. Shipping by the sea is only possible during a few short months each summer. Nunavut's reliance on aviation for cargo and travel is unavoidable.
>
> Nunavut communities also rely almost entirely on burning diesel for heat and electricity, without the efficiency of a grid (our communities are too far apart).

While the Government of Nunavut is taking steps to encourage energy conservation and new types of energy production, the technologies for hydro, solar, wind or tidal generation remain, in industrial useful terms, either untested or unviable in Nunavut's Arctic.

As the report states:

> The Government of Nunavut further advised that ECCC [Environment and Climate Change Canada] had recently finished . . . a study to "assess, the potential impacts of carbon pricing in Nunavut ... [and to] identify, assess and propose possible solutions and opportunities to mitigate potential adverse economic effects in Nunavut."

Honourable colleagues, that's what I'm hoping to hear before I'm asked to vote on Bill C-74. However, as the territorial government said to the committee, the territory has yet to see how specifically the federal government proposes to recognize Nunavut's circumstances through the backstop.

I have asked Senator Harder repeatedly about this issue. I have spoken to the Minister of Environment and Climate Change Canada about this issue, and forgive me for quoting what she told me at a private meeting that I had with her and members of the Energy Committee. It was an informal meeting in her office. She told me, "Don't worry."

Well, honourable colleagues, we're on the eve of voting for this bill. It's enabling legislation which will give the federal government and the officials in Environment and Climate Change Canada and in the Department of Finance Canada the ability to write the rules for the federal backstop in Nunavut. They're going to determine the output-based system for putting a price on carbon consumed by our fledgling mining companies that I'm pleased to see are operating and creating much-needed jobs for Inuit in Nunavut.

However, when I questioned the officials at committee, they couldn't tell me exactly how the output-based system will be applied on Nunavut mining companies. Frankly, honourable senators, I'm afraid that the output-based system is going to develop standards based on efficiencies of mining companies in Southern Canada that don't have to deal with a lack of infrastructure. None of our mines in Nunavut are located anywhere remotely near a highway system. None of them are located near tidewater. They're all handicapped by a lack of access to the energy grid that many mining companies enjoy, or a highway system that many mining companies can access in Southern Canada. So if the output-based system is based on efficient mines that operate with minimal greenhouse gas emissions for mining in Southern Canada, it's going to be a serious threat to the mines that are in place in the Northwest Territories.

Agnico Eagle Mines, a great Canadian gold company which has invested billions of dollars in Nunavut in its Meadowbank and now Meliadine mining project, is employing 36 per cent Inuit in its workforce and working to improve that ratio. It is providing benefits to Inuit-owned businesses throughout Nunavut and has contributed enormously to the GDP of Nunavut. It has forecasted that carbon pricing could cost it up to $50 million per year in the fifth year of its operation without some special consideration for its unique circumstances.

However, colleagues, I don't know whether there will be any special considerations for companies operating in Nunavut and for the residents of Nunavut. So I feel it is my duty, in speaking to this bill on second reading and as the only voice for Nunavut in this chamber, to try to find out how the measures in the greenhouse gas emissions act contained in Part 5 of Bill C-74 will impact the people of Nunavut. We need to know how the federal backstop will be applied in Nunavut. Will there be exemptions to shield Nunavut residents?

Unfortunately, a very high proportion of Nunavut residents must rely on income support to live. There are people who have good-paying jobs in Nunavut, but there are also a lot of people who struggle with food security. Reports have shown that alarming numbers of Aboriginal kids are going to school hungry because of the cost of food. Food costs money because a significant proportion of it has to be flown in from Southern Canada. It's a three-hour flight by jet to bring produce into my community of Iqaluit. I always take people into the local stores, and they are shocked at what it costs to buy food in Nunavut. That's because we're paying for air freight, and airplanes use fuel.

• (1510)

Honourable senators, I'm anxious to know how the special circumstances recognized at the signing of the pan-Canadian framework, by the three territorial premiers in good faith, will be applied to my region of Nunavut. Will there be exemptions to shield Nunavut residents from the impacts of adding a tax to the cost of heating homes in a cold climate or adding a tax to the cost of electricity for keeping the lights on, in a region that is very dark in winter?

Honourable colleagues, as we go forward to consider this bill, I want to put you on notice that I am going to be begging for some answers on how this bill will impact my constituents. I feel it's my duty, in representing this region, to alert you to this challenge, and by notice to Senator Harder, the Government Representative in the Senate, and to his colleagues on cabinet, that I believe the people of Nunavut have a right to know the impact of this budget before I vote on it.

Thank you for listening to my concerns, honourable colleagues. That's my main concern. I thank the Chair of the Energy Committee and my colleagues who put these considerations of mine in our report. And I thank Senator Mockler for highlighting them in his report to you today.

Honourable senators, I'm still waiting for answers.

The Hon. the Speaker *pro tempore*: Would you take a question, Senator Patterson?

Senator Patterson: Yes.

Hon. Yuen Pau Woo: Thank you, Senator Patterson.

I'm trying to understand specifically your reservation about the output-based carbon pricing system. You referred many times in your speech to the worry that this system will require mining industries in the North to meet the efficiency standards of the South.

My understanding of the output-based pricing system is that it has nothing to do with the efficiency of industries in other parts of the country. In fact, it is about setting a price for emissions above the output of that industry over a historical period so that industry does not pay a carbon price up to that limit that reflects its historical production.

I ask this question partly because it also affects not just industries in the North but all industries in this country that are trade exposed, which face international crisis, and therefore could be adversely affected by a carbon price. This is not unique to the North. But it's important if you can set the record straight as to exactly how this pricing system works, that it's not based on efficiency; it's based on setting a ceiling below which no carbon price will be charged. Could you clarify that for us, please?

Senator Patterson: Thank you for the question, Senator Woo.

I have the same general understanding as you do, and perhaps I was unclear in suggesting that the output-based system was based on efficiency. But as I understand it, the output-based system will be different for various industries. I'm concerned about the mining industry, as I mentioned.

The Hon. the Speaker *pro tempore*: Senator Patterson, you've run out of time. Do you require five minutes?

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Patterson: My understanding was that the output-based standards had not been developed by the department when the officials came before our committee, and therefore they're unknown for the mining industry, at least at this time. So in passing this bill, we're passing enabling legislation. The devil will be in the details of the regulations. My first concern was how will we scrutinize the regulations? They're very important to me. There are no provisions for parliamentary scrutiny of the regulations in this bill.

The second concern was how will the output-based systems be designed in consultation with industry? That's my concern. If the industry consultations are with big mining companies based in locations that don't have the geographical and climatic barriers of the few mines that are located in remote locations north of the sixtieth parallel, then the output-based system is going to prejudice those mining companies. I couldn't get any clear answers because the officials said, "Well, the consultations are under way. We're consulting with industry."

My concern, Senator Woo, is no answers now and no way for Parliament to scrutinize the regulations once they're passed.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I'm pleased to speak to Bill C-74 today. As you know, the Standing Senate Committee on Legal and Constitutional Affairs held pre-study hearings. I must admit that I was rather disappointed with how this bill treats victims of crime, especially as regards information and restitution.

I personally think this bill is a step backwards for the rights of victims of crime, which, as you may recall, were recognized in 2015 when Canada adopted the Canadian Victims Bill of Rights. This bill of rights recognizes that victims have four fundamental rights that are supra-constitutional, meaning they take precedence over all federal laws. That means every department dealing with victims of crime is required to respect the four principles enshrined in the Canadian Victims Bill of Rights, namely the right to information, the right to participation, the right to protection, and the right to restitution.

The bill before us has some huge flaws that will have to be fixed at second or third reading, or the bill will just be a slap in the face to victims of crime.

First of all, page 3 of the clause-by-clause review says it is possible that no reparations may be required. That sentence already violates the Canadian Victims Bill of Rights, which calls for fair and equitable restitution. I think it is totally unacceptable to overlook victims like that.

Second, there will be no fine surcharge for an offence under sections 3 and 4 of the *Corruption of Foreign Public Officials Act*. For victims, a fraudster is a fraudster, whether Canadian or not. For such cases, we should provide for compensation to pay for services, at least for the victims of crime.

Third, clause 715.36, which states that the prosecutor must take reasonable steps to inform the victims, has flaws and gaps that must be addressed. In fact, on page 5, the clause-by-clause review points out the following:

> If the decision is made not to inform the victims or third parties that represent the victims . . . .

The Victims Bill of Rights recognizes the right to information.

• (1520)

In my opinion, this bill violates a crucially important law passed by Canada's Parliament: the Canadian Victims Bill of Rights. I should point out that this law is supra-constitutional. Any law the government passes must comply with the rights set out in the Canadian Victims Bill of Rights. If not, the bill violates the principles of the Canadian Victims Bill of Rights.

Fourth, the victim surcharge collected from fraudsters would no longer be mandatory. The prosecutor will be able to impose what he or she considers an appropriate percentage. That could mean a federal victim surcharge of one, two or three per cent rather than the 30 per cent that has been the standard for years. Those are principles in the bill that contravene the Canadian Victims Bill of Rights.

Fifth, I want to highlight the Standing Senate Committee on Legal and Constitutional Affairs' observation 6, which reads as follows:

The committee notes that it did not have the opportunity to hear the testimony of the Minister of Justice on the proposed amendments that are under her ministerial mandate, although she was invited to appear.

I raise this point because ministers seem to be making a habit of not appearing before the Legal Affairs Committee even though they should show up to defend their bills. In this chamber, we have always operated according to the "no minister, no bill" principle. When ministers get in the habit of not showing up to defend their bills and talk about the political aspects, they are disrespecting not only the opposition, but all senators.

In order to do our work properly, we need to know the political point of view behind a bill. It is not enough to hear only from the bureaucrats. Every time we ask a question that relates to politics, we are told to ask the minister, but the minister in question is not always there. I think this shows a lack of respect, not only for the senators on this side of the chamber but also for independent senators, who deserve the same level of respect from ministers. Any time the government introduces a piece of legislation, it should be defended by the ministers, not by a parliamentary secretary or a bureaucrat.

[*English*]

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Martin: On division.

(Motion agreed to and bill read second time, on division.)

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Mitchell, bill referred to the Standing Senate Committee on National Finance.)

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Rod Rosenstein, Deputy Attorney General of the United States.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

CRIMINAL CODE

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT NEGATIVED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boniface, seconded by the Honourable Senator Sinclair, for the third reading of Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, as amended.

And on the motion in amendment of the Honourable Senator Gold, seconded by the Honourable Senator Pate:

That Bill C-46, as amended, be not now read a third time, but that it be further amended in clause 15,

(*a*) on page 23, by replacing line 35 (as replaced by decision of the Senate on June 4, 2018) with the following:

"**320.27 (1)** If a peace officer has reasonable grounds to";

(*b*) on page 24, by adding the following after line 17:

"**(2)** If a peace officer has in his or her possession an approved screening device, the peace officer may, in the course of the lawful exercise of powers under an Act of Parliament or an Act of a provincial legislature or arising at common law, by demand, require the person who is operating a motor vehicle to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of that device and to accompany the peace officer for that purpose."; and

(*c*) on page 34, by replacing line 18 (as replaced by decision of the Senate on June 4, 2018) with the following:

"conducted under paragraph 320.27(1)(a); and".

Hon. Serge Joyal: Honourable senators, I rise to oppose the amendment proposed by Senator Gold. In explaining my position, I will deal essentially with three elements.

The first is the position in public opinion in relation to that amendment and in relation also to the position taken by the representatives of the legal profession during the debate on the specific issue of random breath testing.

Second is the review of jurisprudence in relation to Charter rights, which is essentially that, "Everyone has the right to be secure against unreasonable search or seizure," which would be violated, in my opinion, if the amendment proposed by Senator Gold were adopted. That is my second point, namely, the position of jurisprudence in the last 35 years in relation to the interpretation of section 8.

Then I will address the point raised by Senator Wetston last night — I was not in the chamber, but I read his speech this morning — in relation to the role of this chamber, of Parliament, when there is a doubt about the Charter rights that are included in the proposed legislation and the role of the court. In other words, if there is a problem, should we just shift it to the court, wash our hands and leave the court to deal with it?

Put in simple terms, this is the issue that underlines the comments made last night by Senator Wetston. I think it is an important comment because it addresses not only this bill but also any bill where Charter rights are involved in the enactment of legislation. You have heard me in this chamber during the last nine years of the previous government. You will remember how many times I stood up here and raised an issue in relation to the victims surcharge in relation to minimal penalties and to the eight government bills to change this place to make it an elected chamber in terms of eight or nine years. You will also remember my position in relation to the amendments to the law of succession to the throne. Those are all issues that conflict at a point in time with some sections of the Constitution or the Charter. And what should we do as a chamber when we face such a situation? I thought sharing with you some thoughts in relation to that would be helpful.

My first point is about where Canadian public opinion stands in relation to that alleged violation of section 8 of the Charter, the right to be secure from unreasonable search and seizure.

Honourable senators, public opinion is not as unanimous behind the fact that we should give the police untrammelled power to do whatever they want on the road, to push anybody into the Breathalyzer test.

I want to quote to you the editorial in *The Globe and Mail* of May 29. It was a half-page editorial. The title is "Higher wisdom:"

> The Senate has a habit of providing fodder for its detractors, but every so often it reminds us all of its importance. . . .
>
> Drunk driving requires a robust response, but Bill C-46 places an unreasonable limit on Canadians' freedoms. . . .
>
> Advocacy groups . . . have long agitated for greater police leeway . . . .
>
> The problem with that reasoning is that it reduces random police checks to the level of minor inconveniences — in a free society, there are no such thing — and elides the fact they tend to disproportionately target people of colour. . . .
>
> Police officers need adequate tools to address impaired driving, but that should not include the unfettered discretion to stop anyone they like. . . .
>
> Too much activism on the part of our unelected Senate is a bad thing, but in this case its legal committee is providing sound second thought. The government would be better served by listening to it.

That was *The Globe and Mail* editorial.

Another editorial, this time in the *Ottawa Citizen*, the competing paper, entitled "Sobering Thoughts," states:

> We have little sympathy for those who drink and drive. It's a tremendously self-centred and anti-social behaviour. The government is right to consider policies that will work to put an end to it.
>
> That said, it's the job of the Senate to push back against ill-advised legislation. . . .
>
> In other words, more debate and study is needed. The negative impacts of such provisions have been well-elucidated, and the government's defence hasn't been particularly inspired.

That was the *Ottawa Citizen*, May 26.

The *Ottawa Citizen* again, June 9, last week, during the course of our debate on the cannabis legislation. This time the editorial is signed by Tyler Dawson, Deputy Editorial Pages Editor of the *Ottawa Citizen*. Mr. Tyler wrote:

> Between the separate impaired driving bill — where senators pushed back hard against the end of reasonable suspicion on breathalyzer testing, meaning police could test drivers for alcohol without suspecting they'd had a drink — and the marijuana legalization bill, the Senate has done its level best to do precisely what it exists to do: scrutinize a bill and make it better.

• (1530)

Honourable senators, of course, there have been editorials that push forward the other position. It was so in the *Toronto Star* of May 28, and there is no doubt that there are passionate positions on this issue. When I say "passionate," sometimes I think a position derived by what I call "sentiment," because we all have in our family experiences, friends, neighbours and people who have been caught in accidents, and we are all furious about it. But when we are acting as legislators, we have to act according to the democratic principles of our system.

Honourable senators, I'm not alone in that way of approaching the issue. Listen to who among the legal profession shares the concerns I have: Le Barreau du Québec; Canadian Criminal Justice Association; Indigenous Bar Association, Canadian Bar Association; Kyla Lee and Sarah Leomon, Acumen Law Corporation from Vancouver, Criminal Lawyers' Association, Canadian Council of Criminal Defence Lawyers and the B.C. Civil Liberties Association, to name but a few. So I'm not alone in that boat unless you think this is a crazy, crackpot kind of position. It's not at all, honourable senators.

I'll tell you why. When you are faced with an issue that deals with the life and death of people, you have to ask yourself what are the just principles that need to be applied. Otherwise, we're just swayed by our emotions and our personal experience. This is not the bar to maintain when we want to establish a system that is fair and respectful of the rights and freedoms of every citizen.

I want to reassure you, honourable senators, because last week during the debate, Senator Gold raised a suspicion that the committee might not have done everything to listen to Professor Hogg, who happened to hold a view contrary to the one I proposed. I want to reassure Senator Gold, and I checked this with the clerk of the committee. The committee contacted Professor Hogg on February 5 to ask him to appear in person in March. He could not appear in person. We offered him a videoconference. We emailed on May 4, 7, 8 and 10 to offer him a video conference and again on May 11 to make him the offer to appear at the time of his choice. Professor Hogg, because he is very busy, could not make himself available.

I want to reassure you, Senator Gold, that the committee did not try shift Professor Hogg aside to hear only one side of the position. It's not at all what the steering committee tried to achieve. We wanted to offer a fair opportunity, and I think after contacting Professor Hogg eight times we did our due diligence to try to listen to him. I want to make that very clear.

On the other hand, honourable senators, because Professor Hogg has been adjudicated as being the professor of constitutional law, I have something to suggest to you for your reflection in relation to that. Professor Hogg appeared at the Senate committee on September 27, 2006, in support of the government bill to make this chamber an elected body with a shorter term of eight years. That was the position of Professor Hogg. He was of the opinion that that could be achieved through section 44 of the Constitution. What does section 44 state? It states:

> Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

That was the position of Professor Hogg and I quote his brief: "Other aspects of the Senate can be changed under section 44."

Well, I have to tell you, honourable senators, that there are twelve justices, nine from the Supreme Court, unanimous, and three from the Court of Appeal of Quebec and among them former Justice Dalphond, who is now a senator, who concluded that those changes could not be made under section 44 of the Constitution, and the government legislation was unconstitutional. That's why we have today independent senators who don't need to be elected. They are recommended to the Governor General, the same way as all other senators.

So if you tell me that Professor Hogg is the last word on interpreting the Constitution, I have some reservations. I also have some reservations with Professor Hogg in relation to the amendment to the Succession to the Throne Act. Professor Hogg states the following in his textbook:

> In an earlier version of this book, I interpreted the O'Donohue decision as taking the radical step of adding a nonscheduled statute to the Constitution of Canada. However, I now think that it is incorrect.

It is incorrect, of course, because meanwhile we have had a debate in this chamber. We called upon three experts, Professor Heard, Professor Benoît Pelletier and others, and it was debated in the court and we won in the court. Now Professor Hogg contends that we were right.

I don't dispute Professor Hogg. He is a friend of mine. But I think when we propose that somebody is the last word on a constitutional issue, let's apply our sober second thought.

In applying that sober second thought, honourable senators, I want to bring to your attention to the position of Professor Don Stuart, whom we heard at the committee. Professor Don Stuart has been a professor of law at Queen's University since 1975, so for 43 years. He retired two weeks ago:

> I have been a professor at the Faculty of Law, Queen's University since 1975. I have taught and researched in many aspects of the criminal justice system. I have been the Editor of the Criminal Reports, a national reporting and comment service since 1982 and of the National Judicial Institute's *Criminal Essential eletter* for judges since 1990. I published the 7th edition of my textbook *Charter Justice in Canadian Criminal Law* in February, 2018.

So I feel that the opinion offered by Professor Don Stuart and all of the representatives of the legal profession whom I quoted earlier provides a sound basis on which to establish the position that the proposal of Senator Gold's, respectfully submitted, might not be right.

And why is it not right? I'll tell you. In the last 35 years, The Supreme Court has never accepted that an infringement of the right to be secure against unreasonable search and seizure could be saved by section 1 of the Charter, which is what is acceptable in a democratic society.

Senator Gold asked Senator Batters this question: What are those decisions?

These were past decisions of the Supreme Court where the Supreme Court never concluded the way that Professor Hogg concluded.

Well, I have them, honourable senators. I researched them, and I will quote them very quickly. The *Collins* case in —

The Hon. the Speaker: Sorry, Senator Joyal, but your time has expired. Would you like five more minutes?

Senator Joyal: Thank you, honourable senators.

I think it is important to put these references on the record, and I will tell you why: If Senator Gold's amendment is adopted, it's going to be challenged the next day, and the justices will look into the debate today, yesterday and the day before and the day after. I want that to be on the record to help those who will have to adjudicate on this to know what principles are at stake.

The second reference is *Kokesch* in 1990, perimeter searches. The third one is strip searches in *Golden* in 2001. The fourth one is Kevin Fearon on cellular phones in 2014. The fifth one is in

2016, not that long ago, on genital swabs to get DNA whereby the court also concluded that section 8 cannot be saved by section 1.

I want to come back to the decision that Senator Wetston quoted yesterday, quite appropriately, in my opinion, which is the *Goodwin* decision of the Supreme Court in 2015. What did the Supreme Court conclude in relation to this? To quote the case, paragraph 85:

> In the circumstances, I agree with the chambers judge that the ARP scheme as it existed "does not minimally impair the right of a driver to be free of unreasonable search and seizure" . . . . I conclude that the former "fail" branch of the ARP scheme is not saved under s. 1.

• (1540)

That was 2015. This is where the jurisprudence lies now. When the court will be seized with this minimal impairment, the court will look into two things, I can tell you, honourable senators. They will look to the fact that there now exists an ignition interlock device. In other words, there is a system that you put in your car, and when you sit behind the wheel, the breath that you have is taken by a system that locks the car if you are impaired. That system exists. It's not science fiction; it exists. I have here the quotation of cost and where you can get it.

The second point, which in my opinion is very serious, is the discrimination against targeted groups. We heard at committee the results of a study conducted by the Ottawa Police Service from 2013 to 2015. Here are the conclusions of the racial profiling issue: Middle Eastern drivers were stopped 3.3 times more than you would expect, based on their population in the city, and Black drivers were stopped 2.3 times more, based on their population in the city, as were Aboriginal peoples.

Another one:

> Street checks conducted by the Vancouver Police Department disproportionately involved people who were Indigenous, according to data released by the force . . . .

This is according to a disclosure released by the force on May 24. Here are statistics:

> The data, recently posted to the department website, said 16 per cent of those who were subjected to street checks last year were Indigenous people, who make up about 2 per cent of Vancouver's population.
>
> The data said people who were black, about 1 per cent of Vancouver's population, were also disproportionately stopped. About 5 per cent of street checks last year were of black people.

And then there are the statistics from the Edmonton police:

> . . . Indigenous women in Edmonton were almost 10 times more likely to be stopped and to have their identification recorded than anyone else.

Then from the City of Toronto:

> Specifics do differ from city to city – while black and Indigenous people are most often targeted, those who police consider "brown" show up in the stats for Toronto. Some places like to pick on "Arabs" or "West Asians," which I think means Muslims . . . .

It's clear from all the data and from the court itself — and I would refer to Justice Morden from the Court of Appeal of Ontario, who recognized in one of the court's decisions that there is racial profiling by the police forces. The justice contended that all social studies concluded that.

If we adopt a bill, we in the Senate have the responsibility to speak for the minorities and those who don't have a voice. If we adopt a bill that will have as an impact the targeting of those people, in my humble opinion, we have failed in our constitutional duty. We cannot shift the problem to the court and say the court will deal with it, and once the court will have pronounced, it's going to be the end of it. That's not what I call responsible Parliament.

When we come to the conclusion that there is a violation of Charter rights, it is our responsibility to amend the bill. That is what the Constitution requires, and that's how the court interpreted it in its April 2014 decision.

Thank you, honourable senators.

Hon. Marc Gold: Would Senator Joyal take a question?

The Hon. the Speaker: The senator's time has expired.

Would you like five more minutes, Senator Joyal?

Senator Joyal: If the Senate allows me, I will.

An Hon. Senator: No.

The Hon. the Speaker: I hear a "no."

On debate, Senator Batters.

Hon. Denise Batters: Honourable senators, as you know, I proposed an amendment during the Senate Legal Committee study on Bill C-46 that removed the random alcohol testing provisions from this legislation. The vast majority of the legal experts who appeared before the committee testified that the random alcohol testing provisions in this bill would be blatantly unconstitutional.

My amendment passed with a majority vote of the Senate Legal and Constitutional Affairs Committee and was reported back to this chamber. The amendment Senator Gold is proposing today would have the effect of putting those unconstitutional random alcohol testing provisions back into Bill C-46.

Senator Gold has based much of his belief that the random alcohol testing provisions will be seen as constitutional on the opinion of constitutional generalist Professor Peter Hogg in a short brief that Professor Hogg prepared for the House of Commons committee during their study of Bill C-46 last year.

Prominent legal experts who appeared in front of the Senate Legal and Constitutional Affairs Committee effectively dismantled Professor Hogg's constitutional evaluation.

Professor Don Stuart, a constitutional scholar specializing in the very matter of criminal law and the Charter, disagreed with Professor Hogg's assessment. Professor Stuart quite literally wrote the textbook on criminal law and the Charter that has been used to train thousands of Canadian lawyers. Stuart affirmed that random alcohol testing, without the need for reasonable suspicion, would contravene section 8 of the Charter, the freedom from unreasonable search and seizure, and would not be saved by section 1.

Professor Stuart's brief to the committee declared that Professor Hogg's section 8 analysis:

> . . . completely ignores the fundamental decision in *Hunter v. Southam*, which sets out a strong purposive approach to section 8 where there is a reasonable expectation of privacy. The Supreme Court has long held that a roadside breadth demand engages such privacy protection.

Kyla Lee, a lawyer specializing in impaired driving cases in British Columbia, supported Stuart's evaluation that random alcohol testing in Bill C-46 would be found unconstitutional. She found that the random alcohol testing provisions in the legislation would not be found to be reasonable, minimally impairing or proportionate.

Bill C-46 creates a double standard of treatment for drug-impaired versus alcohol-impaired drivers. Why should alcohol-impaired drivers' Charter rights be infringed while those of drug-impaired drivers are not? For this reason, Lee found that the random alcohol testing regime would, in fact, be found to be unreasonable.

As for minimal impairment or whether the law goes further than necessary, Lee wrote:

> . . . mandatory alcohol screening contemplated under s. 320.27(2) is unnecessary at law. Peace officers are already equipped with the tools and training to compel roadside breath samples when it is reasonable to do so.

Furthermore, Lee found that Bill C-46 would be disproportionate.

I would like to directly address some of the comments that have been made in debate on this amendment so far. In his explanatory speech, attempting to persuade this chamber about his amendment, Senator Gold often cited his own constitutional opinion, but noticeably, he did not refer to any witness testimony to support the constitutionality of the random alcohol testing provision other than "the minister and government officials." It's hardly surprising that the minister and government officials would take this position.

I also found Senator Wetston's arguments to be rather curious; that we should pass this legislation with the random alcohol testing provisions intact so that the courts have an opportunity to rule them unconstitutional. Wouldn't we be better served by legislating to protect the Charter rights of Canadians rather than saddling Canada's already overburdened court system with a decade of legal wrangling and challenges?

As legislators, why would we vote to pass legislation in this chamber that has very clearly been shown to be of dubious constitutionality? As a chamber of legislative review, one of our first obligations should be to ensure that legislation we pass is constitutional. We should not neuter ourselves in this upper chamber of Parliament. Our job is to help create good legislation.

After listening to the mountain of evidence we heard from legal witnesses at the Legal and Constitutional Affairs Committee, I don't know how one would conclude that these random alcohol testing provisions could be constitutional. In my five years as a member of the Legal Committee, I have never heard a bill condemned so roundly as unconstitutional as Bill C-46. And yes, Senator Pratte, that includes three years of Conservative government legislation. Our committee heard grave unconstitutional concerns from representatives of the Canadian Bar Association, the Criminal Lawyers' Association, the Canadian Civil Liberties Association and the Canadian Council of Criminal Defence Lawyers, among others.

• (1550)

Honourable senators, we ignore these eminent legal voices at our peril.

Senator Pratte devoted much of his speaking time to his research on Conservative positions on impaired driving. You should proceed with caution, Senator Pratte; you might start to like Conservative positions.

In any case, Senator Pratte asked what changed between the time MP Steven Blaney introduced his private member's bill, Bill C-226, imposing random alcohol testing for impaired driving, to today. I can tell you what made the difference, honourable senators: the *Jordan* decision. This landmark case of the Supreme Court of Canada held that trials in lower court need to start within 18 months while those in Superior Court must start within 30 months. Unreasonable delays beyond these limits could result in a stay where charges and sometimes even convictions are dropped.

In response to this ruling, scores of cases have been stayed already, including those of first-degree murder, rape, and serious assaults on children.

Senator Pratte shared with us last night the poignant story of a family devastated by impaired driving to illustrate why he feels random breath testing is needed. But among the multitude of cases thrown out by the courts for lengthy delays exacerbated by unconstitutional random alcohol testing, there will be impaired driving cases by the hundreds, including cases where victims have been hurt or killed.

Our Standing Senate Committee on Legal and Constitutional Affairs recently conducted an intensive 18-month study on the court delay crisis in Canada. Some of the independent senators had just been named to the Senate and to the committee near the end of that study. During our examination of the court delay issue, we frequently heard that impaired driving cases were "clogging up court systems." We also discovered that impaired driving cases, on average, were among the longest to resolve due to their complexity, ranging from 105 to 127 days, and a whopping 227 days for drug-impaired driving. With Charter challenges certain to increase under a random alcohol testing regime, it is inevitable that court delays would worsen as a result of its inclusion in Bill C-46.

Senator Gold indicated that the only change random alcohol testing would have would be to remove the requirement for the police to have a reasonable suspicion a driver consumed alcohol before demanding a breath sample. This is a major change. In fact, Michael Bryant of the Canadian Civil Liberties Association testified at committee that:

> It is a huge shift in our criminal justice system. It is a warrantless search without cause and a warrantless seizure of our very breath and bodily fluids without cause. This is a dramatic departure from the way in which this country and our Charter of Rights and Freedoms have operated.
>
> It will now be a crime for an individual to refuse a warrantless without cause seizure of their breath. It will be no defence that they didn't know about Bill C-46.

Of course, one of the primary concerns about including random alcohol testing is that it raises the potential risk of an increase in racial profiling. Adam Steven Boni of the Canadian Council of Criminal Defence Lawyers said:

> Our concern is that the random breath testing in Bill C-46, even if it is declared constitutional, will have the same impact and will further widen the divide between the police and racialized and marginalized groups across the country, especially in communities like Toronto.
>
> This isn't a theoretical argument.

Michael Bryant echoed those statements when he said:

> In the current context or the current era of racial profiling, carding and the treatment of Indigenous people, which we will hear about later, it is an extremely sensitive issue. This is the worst time in which to be introducing anything that has the word "mandatory" in it when it comes to enforcement of the law.

Colleagues, when the government refers to this measure as mandatory alcohol screening, it is important to note that "mandatory" here means that the driver must comply with a Breathalyzer demand, not that the police must test every driver they pull over.

When Senator Jaffer asked Senator Gold a question during debate about how random alcohol testing would affect racial profiling, Senator Gold said, "I don't have a great answer. This is a real problem." Then he went on to say that if random alcohol testing is done in a vulnerable neighbourhood, it may be racial profiling, but if it's done in a diverse neighbourhood, it would not be.

However, there is no requirement in this legislation that stops should only be established in diverse neighbourhoods, and given the geographical and demographic realities of different regions of the country, that is not even practical. Instead, the Trudeau government's provision allows a Breathalyzer demand from anyone, any time, anywhere without even requiring reasonable suspicion, a very low bar.

Honourable senators, we are the body of sober second thought. It is our duty to ensure our laws are the best they can be, not just good enough in the face of overwhelming and compelling evidence to the contrary. This is especially so for the Senate Legal and Constitutional Affairs Committee, a body that is frequently quoted in Supreme Court of Canada judgments.

As senators, we should not be shoving likely unconstitutional laws off to the courts. The profiling of vulnerable communities, the protracted legal battles, the compounding of court delays and the victims of crime whose perpetrators walk free because of them, are consequences that are much too dire. I hope you will join me in voting against this amendment from Senator Gold and for the protection of the rights of Canadians. Thank you.

The Hon. the Speaker *pro tempore*: Senator Batters, would you accept a question?

Senator Batters: Yes.

Senator Gold: Thank you. I regret I wasn't able to ask my question of Senator Joyal to correct what I believe inadvertently was a mischaracterization of my speech and my disappointment that we weren't able to hear any witnesses, not Professors Hogg, Solomon nor Chamberlain, nor of the mischaracterization of the law that *The Globe and Mail* managed to perpetrate.

My question to you, Senator Batters, is this: Would you not agree with the following statements of Justice Karakatsanis in the *Goodwin* case? She said, and I quote: "This compelling purpose of preventing death and serious injuries on public highways weighs heavily in favour of the reasonableness of the breath seizure." And, "This minimally intrusive character supports the reasonableness of the ASD seizure." Further, she said that the proportionality test under section 1 "'. . . does not require the government to adopt the least impairing measure, but rather one 'that falls within a range of reasonable alternatives' . . . ." Thank you.

Senator Batters: I don't have the familiarity that Senator Gold does with that particular case, but what I do return to is Professor Stuart's reasoning on that one. He referred to the *Hunter et al. v. Southam* case and the *Goodwin* case, but he came up with the assertion that random alcohol testing is a violation of section 8 and that random alcohol testing is not justified under section 1, in his eminent opinion. As well, Professor Stuart provided us with the very astute observation that Senator Gold referred to as an excellent sound bite, which happens to be also true, that in 35 years of Charter jurisprudence, section 8 of the Supreme Court has never been justified under section 1.

Senator Gold: Thank you, Senator Batters. You've relied in part on Professor Stuart's testimony and his very powerful statement, my question is this: In the 38 cases where the Supreme Court of Canada actually found an infringement of section 8, section 1 only figured in six of those cases. Given that one of those cases involved a search that was not prescribed by law, which mandatory screening would be, and given that three others involved the issues of lawyer-client privilege where the court did not apply its basic balancing test, the standard test that it would apply in the case of mandatory alcohol screening, but instead incorporated the minimal impairment test from section 1 into its section 8 analysis, thereby rendering section 1 superfluous, if not indeed redundant, do you still believe that Professor Stuart's statement is particularly helpful in predicting how a court would rule on this question?

Senator Batters: I do, and it's bolstered by the fact of the significant section 1 analysis that was done by Kyla Lee, which I also referred to in my remarks. As well, Senator Gold, as you referred to and as Senator Joyal referred to in his argument, you have just confirmed that in 35 years of Charter jurisprudence, the Supreme Court of Canada in those six cases has never found a section 8 case to be justified under section 1.

• (1600)

The Hon. the Speaker *pro tempore*: Senator Lankin, there are 20 seconds left.

Hon. Frances Lankin: Senator Batters, there has been a lot of discussion in a number of people's testimony about section 8 of the Charter and whether it could be saved by section 1. I wanted to ask you about Mr. Edelson's testimony before the committee who raised the problem of section 10(b) and the right to counsel and if there are long lineups of people having tests, what they would do.

The Hon. the Speaker *pro tempore*: Five more minutes? Agreed, honourable senators?

Hon. Senators: Agreed.

Senator Batters: It has also been something that several of the witnesses who testified before the Standing Senate Committee on Legal and Constitutional Affairs talked about. Some of them said not only is it likely a section 8 violation, but also sections and 10(b). That seemed to be the overwhelming position. In fact, one lawyer went on about all the different violations that could potentially occur, and yes, section 10(b) was absolutely one of them, and I believe that was Mr. Boni from the Canadian Council of Criminal Defence Lawyers.

Senator Lankin: To be fair, coming at the question on the flip side — I'm trying to see and weigh a lot of different arguments — it is true that the Justice Department reviewed these provisions and came to an opinion and advised the government and the minister of that opinion, I'm assuming, in terms of how this bill was put together. There seems to be an international experience — not the same laws and Charter; I get that — that says it's one of the potential best practices.

Can you comment on that from the flip side? Do you have an inherent distrust of what Justice says on these things? How did you come to the conclusion that what they brought forward didn't really have any weight in your consideration of this issue?

Senator Batters: I always have a lot of trust in what the Department of Justice officials bring forward, but it doesn't mean that we don't have the duty to properly question them. Many of the same officials were officials who worked for the department at a time frame when our Conservative government was in power, and some of them had actually put together the law that closely mirrored this law, other than the random alcohol testing provisions. That part was totally new to the government legislation.

Like I say, when I sat there, I had never in five years at that committee heard witness after witness after witness coming forward and saying it's unconstitutional for this reason, for this reason, for this reason.

Frankly, when the minister came, we didn't get that much of a detailed justification in many ways. She would just refer to her Charter statement, but her answers to questions, specifically about the distinction between drug testing and alcohol testing, didn't add a lot of weight to her pronouncements on that. Also, the jurisdictions that have random alcohol testing — Australia and New Zealand are two — don't have a Charter of Rights and Freedoms, and that's a big distinction for Canada.

Hon. Pierrette Ringuette: I have a question for Senator Batters.

I've been listening to the Ping-Pong game going on in this chamber among the people who have brilliant legal minds, and I respect that; but as a non-legal brilliant mind, a humble francophone from New Brunswick, what my constituency wants to know is that when you refer to "reasonable expectation of privacy for drivers," how can you balance that with the reasonable expectation of every citizen to be able to be on safe roads, without drunk drivers killing them?

Some Hon. Senators: Hear, hear!

Senator Batters: That is a huge concern for me too and for the people of my province of Saskatchewan and I know across the country. But what I want to make sure is that the people who deserve to be convicted of impaired driving, and have serious consequences so they aren't on the roads killing people, have those consequences, rather than have a potentially unconstitutional law create a decade of Charter litigation that will create court delays that are so huge that we have cases where people who have driven impaired and have hurt or killed others are having their cases thrown out of court because it took too long to go to trial.

Frankly, also to have people who are charged with impaired driving who happen to be pulled over randomly but could have just as easily been pulled over because the police had that low bar met of reasonable suspicion of impairment, giving those people a built-in constitutional defence to challenge it for years and have the victims of those crimes suffer through years of court delays because of it.

Senator Ringuette: You're mixing apples and oranges. The level and the number of court challenges in the court system is completely separate from the issue that we're discussing here. We are discussing drunk driving and the safety of Canadians.

[*Translation*]

Hon. Marie-Françoise Mégie: Honourable senators, as part of today's debate on Bill C-46, I would like to respond to the amendment presented by my colleague, the Honourable Senator Gold.

I will not talk about the constitutional aspects that concern us because there are arguments for both sides. I will leave that debate to our colleagues in this chamber with expertise in that area.

I heard Senator Joyal's and Senator Batters' remarks. They both talked about one of the social impacts of this amendment, specifically racial profiling. I would like to talk about real life, about things that some Canadians experience every day.

I'm not sure whether you have heard about the phenomenon of carding. This practice, which has been adopted by a number of police forces, involves stopping people who are walking down the street and asking them for their personal information. Such details as name, age, skin colour, estimated height and weight, and sometimes even the names of friends are recorded and then carefully entered into a database. What is that information used for? We will never know.

Honourable senators, allow me to ask you another question. What ethnic groups are most often targeted by these sorts of practices? It will come as no surprise that it is the Black and Indigenous communities.

While African-Canadians make up 8.3 per cent of Toronto's population, they accounted for 25 per cent of the routine checks conducted between 2008 and 2011. In Edmonton, for example, Indigenous people make up just over five per cent of the population but accounted for 21 per cent of these routine checks. This figure rises to 32.8 per cent for Indigenous women, which means that an Indigenous woman is 10 times more likely than a White person to be asked for the information mentioned earlier.

Do you think that these people were just out for a walk and had to deal with law enforcement for no good reason?

In November 2017, Radio-Canada televised a short segment called *Noirs et traqués*. Its objective was to inform Canadians about relations between members of the Black community and police in Montreal North. In this report, we learn that, according to an internal report by the Montreal police force, 40 per cent of young Black men in Montreal North have been carded, compared to only six per cent of young Caucasian men. The journalist asks a Montreal police officer in uniform if he agrees that Blacks are stopped more often because of the colour of their skin, and he answers, "It has more to do with the way they are dressed."

Considering the previous behaviour of some police officers, the fundamental rights that others have violated with impunity, and the little to no training those officers have, we believe that Black and Indigenous communities will be targeted more than ever. Do not think that these are isolated incidents. They are common occurrences. Members of these communities must continually fight to avoid being needlessly subjected to the wrath of the legal system.

Honourable senators, I am not alone in believing this. To confirm it, you need only consult the report recently prepared by the United Nations Human Rights Council, which asked a working group to study persons of African descent in Canada. Following this study, the working group prepared a report containing some interesting data. Here is one of the most relevant passages :

> Black drivers were stopped 7,238 times, that is about 8.8 per cent of total stops over the two-year period, while Black drivers represented less than 4 per cent of the total driving population in Ottawa. That means that Black drivers were stopped 2.3 times more than what you would expect based on their population. Owing to its arbitrary use, carding has been known to escalate into police violence, resulting in injuries and even deaths of people of African descent, especially when those targeted are suffering from health issues and mental disabilities.

• (1610)

Do you believe that every instance of racial profiling is reported? Let me give you some context. Would you really fight a ticket that you were given for racist reasons or as a punishment in connection with a minor infraction? Would you spend thousands of dollars on lawyers' fees, go through the stress of a trial, and clog up the courts to prove your point? You might do it if you could afford to, but for the average person, going to court is economically, emotionally and socially taxing, so a lot of people would rather just move on.

Furthermore, what do you do if you think you're being racially profiled, when you weren't accused of anything when you were first stopped? Ironically, on the very day that Bill C-46 was sent back to committee, I received a troubling email. A Canadian citizen of Haitian origin wrote that he had been stopped, handcuffed, and asked who owned the luxury car he was driving and what he did for a living to afford it. In his email, he wondered how he was going to explain to his children why his wife, a Quebecer of European origin, was never stopped in the same vehicle or along the same daily routes. This respected teacher was never sanctioned in any way, but he sent an email to his community to express his distress about the situation. You will never hear about emails like that, and they will never be part of any statistics, but I receive them all the time.

Honourable senators, do you have any idea of the consequences of these unjustified checks? Let's begin by talking about their effects on victims. It makes them feel humiliated and dehumanized. It can lead to a loss of dignity and self-esteem. As the American Psychological Association has mentioned, researchers who looked into this situation have reported that victims show signs of post-traumatic stress syndrome and other stress-related disorders.

Racial profiling is not a medical diagnosis. It will not appear in the medical records of those affected. Instead, there will be notes about depression, suicide attempts and that sort of thing. These people did not die, but their lives are being destroyed. The media will never report about it, and the cycle will continue.

Studies have shown that the effects of racial profiling go beyond the psychological and social harm experienced directly by victims and impact society as a whole. Loved ones, such as parents, friends and colleagues, are affected. According to experts, this leads to heavy financial and social burdens.

Honourable colleagues, let's not forget that any discriminatory practice undermines the public's confidence in the police, the justice system and the government. That feeling is not limited to the communities that are subject to racial profiling, but, rather, it is apparent in all sectors of society. Feelings of distrust can arise from personal experience, from witnessing a discriminatory check. They can also arise from the perception of racial profiling by some police officers.

Honourable senators, please believe me when I say that I'm very sensitive to matters of road safety. One of my close friends lost two of her sisters in a very serious traffic accident. Their lives were cut short by a repeat drunk driving offender. As I'm sure you can imagine, it is hard to put this terrible double loss into words.

No one can argue against doing the right thing. Still, I don't think the scourge of impaired driving will be eliminated simply by implementing a mandatory detection test. We must take meaningful action to prevent deaths and to honour the victims.

A number of senators have cited other countries that use mandatory Breathalyzer tests as justification for using it Canada. However, it is worth examining this a little further to see exactly what we're talking about. Australia has often been mentioned in this regard, but in most regions of that country, the blood alcohol concentration limit is 0.05. Ireland has also been cited for its mandatory Breathalyzer policies. In that jurisdiction, young drivers must not exceed a blood alcohol concentration of 0.02, and for older drivers, the limit is 0.05.

Moreover, in many other European countries such as Norway and Sweden, the maximum blood alcohol concentration allowed is apparently 0.02. Knowing that, do you really think anyone would risk driving after even two drinks?

All too often we see how families are destroyed by the actions of repeat offenders. Sooner or later, we need to look more closely at penalties and make sure they are sufficiently harsh. We also need to look at whether we could be doing more to improve rehabilitation programs.

Honourable colleagues, the Standing Senate Committee on Legal and Constitutional Affairs listened closely to many moving testimonies from victims, their parents, the police, lawyers and various stakeholders. Based on what they heard, the committee members made a free and informed decision in good conscience. Out of consideration for their excellent work, I sincerely believe that we must humbly respect their decision.

I also want to remind senators that the role of the Senate has changed over time and that it must give a voice in Parliament to underrepresented groups that otherwise cannot be heard.

Therefore, honourable senators, for all the reasons I've given, I ask you to vote against the proposed amendment. However, when it comes to developing an effective and sustainable program for improving road safety in order to save millions of lives, know that you can count on my support. Thank you.

Hon. Senators: Hear, hear!

[*English*]

Hon. Gwen Boniface: Will Senator Mégie take a question?

[*Translation*]

Senator Mégie: Yes, of course.

[*English*]

Senator Boniface: Senator Mégie, you referenced the study on carding in Toronto and I wondered if you were aware that the Province of Ontario has taken action against the carding issue. They've put new legislation in place. They've made mandatory training for all officers who serve in the province to help them understand what an appropriate professional traffic stop is.

Second, I want to make sure you have a sense that there are a number of agencies taking training through a program called Fair & Impartial Policing, which is probably one of the best programs in North America. Are you aware of some of the steps that have been taken in trying to address the issues that you spoke about?

[*Translation*]

Senator Mégie: I thank the senator for the question. I know that they have taken some corrective measures and in doing so they had to rely on section 8 of the Canadian Charter of Rights and Freedoms. Even though they could have simply made reference to it, they wrote it in the regulations precisely to put it in black and white and make it very clear, and to be able to include everything you just explained. Even though I was aware of that, I felt the need to explain the phenomenon of carding so that people would know what that practice was all about.

[*English*]

Senator Gold: Would Senator Mégie take a question?

[*Translation*]

Senator Mégie: I would be happy to.

Senator Gold: I invite you to comment on what I am about to say. I'm sure you know that stopping a driver for any reason has been legal for three decades, as repeatedly upheld by the Supreme Court. Can you explain how mandatory alcohol screening would alter the power to stop people, which I see as a major contributor to the problem of racial profiling?

• (1620)

Senator Mégie: The power I am referring to is a police officer's discretionary power. I'm not saying that all police officers will abuse this power, but I think that abuse could happen, and it could exacerbate racial profiling. Racial profiling has always existed, and one bill is not going to change that. Racial profiling will be exacerbated by people who excessively abuse their discretionary power.

[*English*]

The Hon. the Speaker *pro tempore*: Senator Gold, Senator Mégie's time is winding down.

Senator Plett: Five minutes.

Senator Gold: Would you take another question?

[*Translation*]

Wouldn't you say that even without the introduction of mandatory screening, police officers already have the right to stop a driver for any reason, provided this is authorized in the act? An officer can not only demand proof of insurance, but can also check blood alcohol levels if he or she thinks that someone has been drinking. This discretionary power was upheld by the Supreme Court in 1985 and has been used in Canada for 30 years.

Senator Mégie: I'm referring to the "reasonable grounds" part. You just said, "if there are reasonable grounds to stop the person."

Senator Gold: I find that the authorities don't need a reason to stop someone. If they decide to stop only people with brown hair instead of blond hair, they can do that. They have the power to stop someone for any reason. It's not legal for them to racially profile someone in exercising their power, but the crux of the problem is that they have the discretionary power to stop someone for any reason.

Unfortunately, reinstating mandatory screening won't change that in any way, either for better or for worse. This discretionary power to stop anyone for any reason won't make a difference. Don't you agree?

Senator Mégie: Thank you for clearing that up. I agree that this little section of the bill is not going to fix the problem of racial profiling. Other countries have used blood alcohol concentration limits. They've established a program based on them. We are choosing a solution inspired by another country's program and implementing it, in the belief that it will fix the problem. I don't think it's going to fix the problem of drunk driving.

If we could use other countries' best practices as a basis to develop a program that would be reliable over the long term — as a whole, not just with the Breathalyzer — that would be preferable, given the potential for harm.

[*English*]

Hon. Vernon White: As a result of the discussion regarding the amendment to Bill C-46, I thought I'd rise and try to make a few points.

I will start with what I believe is one of the most important impacts of mandatory screening — the reality that focused legislation on impaired driving stops or deters people from driving while impaired. Australia, New Zealand and many European countries, including Finland, would state and argue that it has had an impact on impaired driving and does deter such activity. I'll speak to the stats in a minute.

To be clear, mandatory screening is not a new stopping power. The reality is that random stopping power has been dealt with by the courts. The police have had that ability. The courts have stated that stopping a vehicle to ensure the driver is licensed, that the vehicle is registered and that the driver is sober, is lawful, even though there may have been no indication to the contrary. As a police officer, I could have stopped a car and asked for their driver's licence, even though I had no reason to believe they didn't have a driver's licence. So that reality exists today. They can be stopped to check for those things right now. In essence, with mandatory testing, we will then also be allowed to have the officer make a demand for a breath test on site.

The concern raised surrounding racial profiling I believe should be addressed. I wanted to ask a question of my friend Senator Jaffer, but time ran out. The concern raised surrounding the potential is real. I understand that. But there's a way to manage any type of review, called a unified crime reporting survey system, that's in place today. The Government of Canada requires certain police agencies to track information on certain types of calls already. It can be tracked in real time. It can track demographics. It can track breath tests. It can track time of day. It can track location. It can track any of those things. The government just has to request and demand it of a police agency. So the ability to gather that information doesn't require a two-, three-, five-year review. It can be tracked continuously and reported on continuously.

But I want to be clear: There has been no evidence in the countries I just spoke about, where they put in mandatory alcohol screening, that racial profiling has been a result of mandatory alcohol screening. In fact, in my 32 years in policing, three provinces, three territories, three police agencies, over a decade as a commanding officer, a police chief, I have not seen one complaint of racial profiling pertaining to impaired driving. Not one. And I've seen lots.

I do want to speak specifically to the case that Senator Joyal spoke about at the Ottawa Police Service, because I ordered a racial profiling review when I was the police chief. It had nothing to do with impaired driving. In fact, the results he quotes never refer to impaired driving or breath testing.

Racial profiling exists, and it's wrong, but impaired driving and mandatory testing will not impact on that. The cops who are bad don't need another reason to be bad. If they're going to racially profile, they already have legislation that allows them to stop anybody they want, anytime they want. So let's be clear about that.

So what will we see with this new tool that will come through Bill C-46 if Senator Gold's amendment is accepted? We will help law enforcement to get drunk drivers off the roads. We will deter those who may consider driving impaired from doing so, as I can say from my personal experience, not drunk driving, but being in Australia and in Finland, which both have that. At every social event, the first discussion that takes place is around: Are you driving? Every time. In fact, to quote the Honourable Steven Blaney, from the other place:

> Finland, Sweden and France have adopted mandatory screening . . . . Most of Australian governments did in the 1980s and New Zealand and most European countries in the 1990s.

Ireland has been the last country to adopt it, and I don't think it had anything to do with Senator Boniface living there. But it launched its program in 2006. He went on to say that Finland, where I go twice a year, has seen a 50 per cent reduction in impaired driving cases — 50 per cent.

We will save the lives of Canadians. More than 600 people are murdered in this country every year. More than 1,200 die as a result of impaired driving. If we save 10 per cent, it's 120. We will save lives. We will give a simple tool, which the police already have access to, greater utility. That's it. This is about saving lives. This isn't about any of us. This is about Canadians. I support mandatory alcohol screening, and I ask you to do the same.

Thank you.

• (1630)

The Hon. the Speaker *pro tempore*: Would you accept a question, Senator White?

Senator White: Is it from Senator Eggleton?

The Hon. the Speaker *pro tempore*: Yes.

Senator White: Yes, I will.

Hon. Art Eggleton: Well, we did hear a lot of legal and constitutional arguments earlier, and now I think we're getting down to the issue that you have raised here of public safety and saving lives, as you put it, versus human rights or Charter rights and where to draw the line. What is the appropriate balance in that and how do you try to cut down on the discrimination that exists?

You're convinced that it's saving lives, but what now happens is the police can pull the driver over and ask for the driver's licence, but they need reasonable suspicion to go the next step on testing.

How do we know that going from reasonable suspicion to they get the test whether there is reasonable suspicion or not is really going to save lives? I take it that our police officers are well trained in terms of what to look for and how to determine whether that person might, in fact, be driving under the influence and therefore should get that test. But what you seem to be saying is no, they're not, and that the reasonable suspicion isn't doing the job.

What is the evidence that indicates that really is going to make a difference?

Senator White: Thank you very much for the question. I was joking earlier about if it was yours, I wouldn't take it. Maybe I wasn't; anyway, it doesn't matter.

I can only go from my experience. I served 19 years in the Arctic, and I can tell you that almost never did I have driving evidence of an impaired driver. Instead, it was either at a R.I.D.E. stop check, a stop check or a routine stop, which I was allowed by law to do. Even then it was difficult to get the evidence, particularly if they were drinking vodka or some other spirits, from Cape Breton — so they were drinking moonshine. It is difficult to always get the evidence you would need to get you to the grounds to make a demand.

Ultimately, I still believe that you will be able to get more impaired drivers off the road by testing them, but I absolutely believe it will be a deterrence when people realize, "I don't just have to drink a bottle of Scope, chew some gum or have my window rolled up. They are going to demand it anyway if they choose to." I believe it will have an impact on those people and it will deter them.

I can tell you that going to Australia once or twice a year and going to Finland twice a year, where they have this in place, it is a discussion every single time: If you get pulled over tonight, you're going to get tested. It's not you "may" get tested. If you get pulled over, you are going to get tested.

Senator Eggleton: Every time we would go to restaurants, bars, parties or wherever, people would have that discussion: "Am I capable of driving home or not capable?" People are by and large quite conscious of that. The fact that is that they're concerned about being pulled over. I don't know that it's a difference as to whether reasonable suspicion comes into play or not, but certainly when the officer stops somebody, they can ask them, "Have you had a drink?" They can watch their behaviour or the slur of their speech. It doesn't mean they have to "prove" before they get to the test; it means "suspicion" before they get to the test.

So I'm still looking to be convinced that dropping reasonable suspicion somehow is going to make a lot of difference in saving lives versus the human rights aspect, which is foregone in this case.

Senator White: Thank you very much for the question.

Instead, if I may, they can go through what you described or they can walk up to the window and demand a breath test. In 30 seconds, they drive on or they don't.

I don't disagree that they could do those other things, but I can tell you from my experience that I have not always been able to tell. On many occasions I have thought they might be drinking and driving. I thought they might be, but I did not have evidence to think they were.

As much as I appreciate that, it's no different than asking for their driver's licence. If I thought they had a driver's licence, I still demanded it.

Hon. Mobina S. B. Jaffer: Senator White, will you take another question?

Senator White: Yes, I will.

Senator Jaffer: Senator, you know what the issue is. It's not so much about mandatory screening. It's the issue of giving the police forces yet more powers to do more things. You know and we know that carding is an issue not so much when driving as while you're walking. It has nothing to do with driving; it's while you're walking. We also know that in Ontario the rules have changed, but it's the fact of giving police officers more power.

Since you were a police chief, how do we hold police forces accountable so communities like mine don't feel harassed?

Senator White: Thank you very much for the question.

You're absolutely right, by the way. In fact, in the Ottawa case for the Ontario Human Rights Commission, we negotiated with them to do a racial profiling study. The individual who made the complaint stated they did not want driving statistics to be used, because even though in that case he was a driver of a vehicle, he stated that the issue wasn't about driving and that the issue was about race. He felt that walking while Black was the issue, not driving while Black, in this case, even though he was driving.

In Canada, Ontario has the greatest level of oversight of any police force in the country. Canada is one of the top in the world. We have systems in place where we take complaints. They can go to human rights commissions and oversight bodies. There are 198 or so police agencies in this country, and every one of them has some level of oversight for complaints.

I'm not naive to think that the 66,000 cops out there don't do things wrong, that sometimes the cheese doesn't slip off the cracker and they screw up. I don't believe that for a second; I know it happens. But we have oversight bodies in place to do those investigations.

You made a statement in your question, in the beginning, that this is about giving more tools to the police. It's not even more tools. It's the same tool that can be used to a greater level. That's all this is. If they're going to make it up and test you because they're racial profiling, they're not going to worry about whether you actually have the smell of alcohol. They're not going to use impaired driving as the test. They're going to stop you because they can and because you're racialized. That's what they're going to do if it's a racial profiling case.

Hon. David Tkachuk: I have one question. You said sometimes you weren't able to tell, so that person would have driven off. So how would you know that you didn't know that person was drinking?

Senator White: That is a great question. It is probably because those countries that have instituted mandatory screening have seen a dramatic reduction in impaired driving. The fact is that no matter how many times we try this, we still have 1,200 people, give or take, dying from impaired driving on our streets. If we can reduce it by 10 per cent, we'll save 120 people. The truth is I think we can only look at the data that comes from Australia, New Zealand and the European countries and state that they've been successful. I don't think we have done everything we can, and this is an opportunity.

Senator Lankin: Will the senator take a question?

Senator White: Yes, I will.

Senator Lankin: Thank you. I want to ask you about the research you're referring to. As I have looked at it, I was curious to see that, in fact, the constant measurement is road fatalities involving alcohol, and Canada already has a lower rate than a number of the countries you're referring to.

I was equally interested to find out that the laws are not all the same. Ireland, which you and others have referred to often, in fact applies the mandatory alcohol screening at checkpoints and not randomly, so it's not the same.

Those countries that have lower rates, like Sweden at 20 per cent fatalities involving alcohol, et cetera, also have the lowest rate of blood alcohol content laws. Theirs is 0.02. Ours is 0.08 and in some jurisdictions it is 0.05.

I could make the case from the reading of this that the common factor in reducing may, in fact, be the blood alcohol content. If you can only have a half a drink, and that's it, or you're going to get caught, maybe that's more of a deterrent. I don't know that's the case and I don't know you're right that it's the case of mandatory alcohol screening. I feel like this becomes an argument when you take the legal arguments out of it, which I don't think we should do because it then becomes an argument of sentiment.

• (1640)

Can you tell me how you rely on those studies? When I look at them, I see that it is not apples and apples that are being measured.

Senator White: Do I need five more minutes?

The Hon the Speaker *pro tempore*: Honourable colleagues, would you give Senator White five more minutes?

Some Hon. Senators: Agreed.

Senator White: Thank you very much, Senator Plett.

I guess there is no panacea. If there was one pill that fixed all the problems, we would take that pill. The reality is I do agree that we should reduce the rates across the board. It should be 0.05 or 0.03. I'm sure we will have a discussion in the future about nanograms of marijuana.

I'm not suggesting this will solve our problem. I don't think this will. I would support a private member's bill or a government bill that actually reduced the blood alcohol reading.

I have five minutes, so I can rant a bit. Concerns were raised about flooding our courts with more cases. The largest provinces in this country that had impaired driving have gone to administrative breaches, which means they're not going to court. With this legislation, we will hopefully see those other provinces jump on the fact that they need administrative breaches as well. British Columbia is probably the most successful at combating impaired driving because they're not taking cases to court. They're using administrative breach sanctions instead. Hopefully we will see something like that in the provinces as well. Thank you very much.

Senator Boniface: Honourable senators, I rise in support of Senator Gold's amendment to reintroduce mandatory alcohol screening, or MAS, back into the legislation before us.

Mandatory alcohol screening is not a new concept. In fact, Canada is lagging behind other countries in the implementation of this proven safety measure. Mandatory alcohol screening is currently practised in many countries, as we have heard, including Australia, Belgium, Denmark, Finland, France, Iceland, Ireland and New Zealand. We are merely following much of the international community in better ensuring road safety.

Further, MAS isn't even a new idea in the Canadian context. In a 2009 report from the Standing Committee on Justice and Human Rights in the other place, entitled *Ending Alcohol-Impaired Driving: A Common Approach*, MAS, or random breath testing, the term used in this report, was one of the tools that was considered. The following recommendation was made from that committee:

> The Committee recommends that random roadside breath testing be put in place.

This recommendation was adopted unanimously by the committee; MPs representing all parties around the table.

As Senator Pratte pointed out yesterday, the previous government also introduced a bill that included mandatory alcohol screening. I ask you to take into account these two key considerations: firstly, that Canada is lagging behind — not leading the way — on this crucial measure. A 2015 World Health Organization report found 121 out of 180 countries studied had some form of MAS. We are decades behind other countries, such as Finland, Sweden and France, who have had this in place since the 1970s. Some Australian jurisdictions have had it in since the 1980s, and most other European countries, as well as New Zealand, enacted MAS in the 1990s. In fact, in a study from the European Transport Safety Council involving the capital cities of the European Union member states, it was reported that mandatory alcohol screening programs were found in all cities with above average decreases in traffic fatalities. Essentially, it works.

Secondly, the idea of MAS has not been a new proposal within Canada. As I previously stated, others have tried to introduce this proven method as well.

In Bill C-226, the very first lines of the preamble read as follows:

> Whereas dangerous driving and impaired driving injure or kill thousands of people in Canada every year;

This exact line is repeated in the exact same location of the preamble of the bill before you today, and there is a reason for that.

Impaired driving is the leading criminal cause of death and injury in Canada, with over 1,000 deaths and 60,000 injuries occurring annually, according to Mothers Against Drunk Drivers. This is an issue that has been plaguing our roadways with immense social and fiscal costs, courtroom challenges and thousands of lives altered each year. It is estimated that mandatory alcohol screening, if introduced in Canada, has the potential to save the healthcare system $4.3 billion in its first year.

MADD Canada issued a press release on May 29. I will take the opportunity to read an important paragraph into the record:

> . . . Canada has long had one of the poorest impaired driving records among comparable countries. The U.S. Centers for Disease Control and Prevention reported that Canada had the highest percentage of alcohol involvement in crash deaths among 20 high-income countries in 2013, even though it has one of the lowest rates of alcohol consumption. Canadians drink considerably less than residents of many other countries and yet are much more likely to die in an alcohol-related crash.

This is exactly the issue that MAS is trying to address. There is only one intent to this particular provision. It is safety. More lives must be saved and injuries must be reduced.

A 2015 study from Statistics Canada conveyed that 96 per cent of police-reported impaired driving incidents involved alcohol. I would like to take a couple of minutes to outline the current system used by peace officers at the roadside to check for alcohol impairment.

For many years, officers have had the power, under provincial and territorial legislation, to stop any vehicle to check its condition, the driver's licence and the condition of the driver, including his or her sobriety. The power to randomly stop vehicles, as Senator White alluded to, was long ago upheld in the 1990 decision by the Supreme Court.

Bill C-46 has no impact on this whatsoever. If an officer pulls a person over, he or she will then approach the driver's side of the vehicle and ask for the licence and registration.

An officer currently needs reasonable suspicion that there is alcohol in the driver's body in order to test someone on an approved screening device. The test for reasonable suspicion is based on observations from the officer and may include things such as slurred speech, as Senator Eggleton referred to, open alcohol in the vehicle or the admission to have been drinking. Unfortunately, there are no guaranteed means of detecting alcohol consumption by this procedure alone.

This means that many impaired drivers are not caught by the current screening method that Senator White alluded to. A brief interaction at the side of the road based on observations makes it a difficult task for officers in determining if impaired driving is actually taking place.

As was stated by Andrew Murie when he appeared at Legal and Constitutional Affairs on March 1:

> Canada's current system of breath testing is one of selective breath testing. Only drivers reasonably suspected of driving impaired can be tested. Studies have shown that such programs miss a significant portion of legally impaired drivers. They miss 90 per cent of drivers with BACs between 0.05 and 0.079, and they miss 60 per cent of drivers with blood-alcohol concentrations over the criminal limit of 0.08.

These numbers were echoed in a letter to senators by the Canadian Association of Chiefs of Police. Sixty per cent of drivers above the criminal limit are missed by officers under the current system of selective breath testing today.

If this chamber so chooses to re-implement mandatory alcohol screening, which I believe should be done, the roadside situation would be as follows: An officer stops a vehicle to check its condition, the driver's licence and the condition of the driver, including sobriety. There is no change here. The difference now is the officer is able to ask for a roadside alcohol screening test on the approved screening device, but only if the driver is in present care or control of the vehicle and the officer is in immediate possession of the screening device. That is an intentional prerequisite to ensure that the detention is as short as possible.

It would follow more along the lines of: licence, registration and a sample of breath. The breath test on the roadside device takes between 10 and 20 seconds and will provide a reading which will say: pass, warn or fail.

Mandatory screening without individualized suspicion has been upheld under the Charter in several contexts, including those who enter courthouses and at border crossings. Such encounters can include being subjected to bodily frisking, pat-downs, X-rays, skin swabs and searches of our belongings. If security of courthouses and borders justifies such bodily searches, surely the prevention of impaired crashes on our roadways could do so as well.

The request for an approved screening device sample at the roadside is a critical measure in ensuring that the checking of a driver's sobriety criterion is met, especially given the current rates of injury and death in Canada and the number of impaired drivers who are able to escape detection.

An officer's number one priority on the roadways is safety. The amendment at committee removed the section of this bill that would have the biggest impact on roadway safety.

Mandatory alcohol testing is a tried-and-true life-saving tool, and as Canada has plateaued in its ability to appropriately deal with alcohol-impaired drivers, it is now a necessary tool as well.

Senators, let me explain what driving is and what driving it is not.

Driving is an inherently dangerous activity engaged in by millions of Canadians daily. It is already a highly regulated activity due to the danger it poses. Driving is more dangerous with particular substances in one's system, including alcohol, and is an act that inherently involves a lesser expectation of privacy than, for example, being in one's private space.

• (1650)

Driving is a privilege, a choice. Here is what it's not: It's not a right. People consciously make the decision to drink and drive every day. They make the choice to actively put others on the roadway at risk of injury or death. Unfortunately, police detection of alcohol-impaired driving is often the last resort in keeping the roads safe as many impaired drivers are recidivists whose level of tolerance successfully evades detection during a brief roadside stop.

Organizations such as MADD Canada and Éduc'alcool in Quebec work tirelessly with their education and social media campaigns to inform people of the perils of alcohol-impaired driving, and they do so at this level of "choice." Yet at this point in time, after decades of preventative messaging, most everyone knows that drinking and driving is dangerous, but some still choose to do it.

That is why I believe that police detection using a scientific and accurate device is a reasonable step to keep our roads safe. If these impaired drivers, who are perfectly aware of the dangers of their actions, choose to drive regardless, then it's up to police officers to stop them before a potential collision occurs. This is why we must give the officers the best tools available to do the job.

It has been said that MAS could lead to racial profiling. Racial profiling is abhorrent and unacceptable anywhere and in any context. It is contrary to the law, including the Charter. But remember the key point that police officers already have the power to make random stops to check for sobriety. MAS does not create a new opportunity to do so. It provides an investigative tool while doing the sobriety check. Furthermore, it requires that the driver must have been lawfully stopped in order for a lawful MAS demand to be made. A stop because of racial profiling, a factual determination by the court, is clearly unlawful. The evidence would not be admissible.

Honourable senators, Bill C-46 isn't the legal vehicle to tackle racial profiling. As other senators have already stated, it needs to be tackled through oversight, training, strict policies and, clearly, leadership.

Further, I disagree with the reasons used at the committee to remove MAS from Bill C-46: that the section could be unconstitutional and lead to further court delays.

Leaving out other areas of this bill that will lead to efficiencies in our justice system, MAS is actually likely to streamline the process that currently contributes to delays and involves significant fiscal resources. For example, it's pointed out in "Random Breath Testing in Canada: Evidence and Challenges," authored by Robert Solomon and Erica Chamberlain from the Faculty of Law at Western University, who wrote:

> Police must convince a court that their subjective assessment at roadside provided a reasonable factual basis for demanding an ASD test. It is common practice for defence counsel to aggressively challenge the officer's basis for demanding these tests. Moreover, some judges have applied a rigorous standard for making the demand. Unless the driver admits to drinking, police generally require clear visible signs that the driver had consumed alcohol or was driving in an impaired manner to demand the ASD test . . . .

As I have mentioned previously, clear visible signs do not always denote impairment nor impairment by alcohol in all cases. The introduction of MAS removes the subjective assessment by the officer since drivers who are stopped either at roadside or at a checkpoint are required to engage in this testing. This means that challenges against an officer's observations would no longer exist, and the roadside breath test would simply speak for itself: You pass, you warn, you fail.

When it comes to constitutionality, I agree that this provision will be in all likelihood be challenged as it may infringe upon Charter rights. I don't think there is a legal mind who would argue otherwise. This is a substantial change to criminal law, and, as with other changes, constitutional challenges will and should occur. Court decisions are what aid us in implementing strong laws that uphold Charter values. We look to case law to give us an indication of how to decipher these new challenges.

Yes, witnesses have said this provision is unconstitutional, including criminal defence lawyers and experts, yet numerous witnesses, as well as those in the other place, have said it is indeed constitutional. In fact, Dr. Hogg would have been one of those. We have the legal opinion from Dr. Peter Hogg that MAS does not raise any truly new issues.

There are arguments on both sides of this issue. We heard them in the chamber today. Even our two constitutional experts on the Legal and Constitutional Affairs Committee are at odds on this particular section of the bill. But this only reinforces that the decision is not only best left to the courts, but appropriately left to the courts, to rule on its constitutionality. They are best situated and will have a full evidentiary and legal record, including the information available to the House of Commons in passing this legislation.

Senators, it is also important to mention that the government itself tabled a Charter statement along with Bill C-46 concluding that this would be a constitutional provision. The government made a policy choice to move forward with MAS after doing significant research, and they took the steps to determine that it was Charter compliant. Furthermore, based on experience in other countries, MAS can be expected to reduce the number of impaired charges being laid because it has a proactive and deterrent effect. Senator White spoke about that a while ago. For example, rather than overburdening its courts, Ireland saw impaired-driving charges fall dramatically, from just under 19,000 in 2006 to just over 6,500 a decade later.

In an era of Charter litigation, it can be expected that most changes to the criminal law will attract vigorous challenges that will ultimately be decided by the Supreme Court. That is inevitable. We cannot let trepidation about initial challenges freeze the necessary evolution of our laws to reflect evolving public policy and government intention to improve road safety.

At this point, there is no way we can conclude decisively if mandatory alcohol screening is or is not Charter compliant. There is much evidence both ways. This is a case best decided in the proper venue, that being our court system, and not the Legal and Constitutional Affairs Committee in the Senate or here in the chamber.

Not only has the current house committee passed Bill C-46 —

The Hon. the Speaker *pro tempore*: Your time is up. Do you require more time?

An Hon. Senator: Five minutes.

Senator Boniface: Not only has the current house committee passed Bill C-46 with this provision intact, but a previous committee under a previous government unanimously supported the idea of mandatory alcohol screening in their alcohol-impaired driving report.

An estimate based on the experience of other countries could be as high as 200 lives saved and 12,000 fewer injuries in one year alone. Please consider this when you make your decision.

Honourable senators, I have seen impaired driving at its worst. As an officer, I have been flung into traffic by an impaired driver who later blew 300 milligrams over the legal limit. I have watched the devastation in families when a member has received catastrophic injuries. I have found myself in Sunnybrook Hospital consoling the family of an officer while he was in a coma after being struck at a RIDE check by a driver who then left the scene.

I assure you, senators, there are no words to explain this devastation. I've always hoped it would get better on our roadways and that people would learn that you do not drink and driver, but the current state is unacceptable.

I encourage all senators to vote in favour of re-implementing mandatory alcohol screening into this legislation to make your drive, as well as that of all of your loved ones, safer. Make no mistake: Lives depend on this.

The Hon. the Speaker *pro tempore*: Senator Boniface, would you accept some questions?

Senator Boniface: Yes.

Senator Eggleton: I agree with your closing comment that the current situation is unacceptable and we need to do things to cut down on impaired driving. I'm just not sure this is the right tool. You talk about these other figures and these other countries, but I don't know whether the situations are exactly the same. They might have other measures and laws — I don't really know that we could accomplish the same thing.

We hear all the time about people that have gone out and killed other people on the roads. I'm not aware of any of them who went through a random mandatory test and then went out on that same drive. I'm not aware of that kind of statistic, so I'm not sure this is the right way to cut down on the number. I agree we need to find ways to cut down on the number. Maybe we need self-administered Breathalyzer instruments that are more readily available. You already said that people consciously talk about this issue. I'm not sure this is the right instrument.

What other evidence do you have? Most of these people who go out and kill people have not gone through one of these checkpoints for random tests.

The Hon. the Speaker *pro tempore*: Your time is running down, Senator Eggleton.

Senator Eggleton: Have you ever thought about that? I have one more question after that.

The Hon. the Speaker *pro tempore*: I think I should give Senator McCallum a chance.

• (1700)

Senator Boniface: We've had this discussion amongst our own team as well, but let me use an example. I lived in Ireland when they actually brought it in there. As Senator White said, this has had a huge deterrence factor in terms of people making choices not to drive.

I grew up in rural Ontario. Sadly, there were very few times when young men, and the odd woman, would go on a trip without alcohol in the vehicle. But the real issue here is the officer's ability to detect. I don't think we have to wait until someone has an accident to come back and decide whether they got stopped in the check.

There are two issues that often arise. One is if they produce their licence and registration. If you ask the question, "Have you been drinking?" and they say, "No," and the window is open this much, then what do you expect the officer to collect in terms of evidence? They have to engage and people choose not to engage. And people get smart; they know they don't have to engage.

The second thing you have is road checks. Why this becomes important is with no social media — I live in a small city in central Ontario — the ride check is not set up very long before it's tweeted all over where the road check is sitting.

Some of the steps that we take will, one, deal with deterrence. The second piece that I think will really help officers is the objective nature of the test because they don't have to go through the subjective piece. In fact, from a driver's perspective they may find it less intrusive that they only have to provide a sample for 20 seconds to 30 seconds; if they pass, they're on their way.

These stats have shown —

The Hon. the Speaker *pro tempore*: Senator, your time is up.

Are senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker *pro tempore*: In amendment, it was moved by the Honourable Senator Gold, seconded by the Honourable Senator Pate, that Bill C-46 be not read a third time but that it be amended in clause 15 — may I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: All those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: All those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: The vote will be held at 5:32 p.m.

Call in the senators.

• (1730)

Motion in amendment of the Honourable Senator Gold negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Bellemare	Hartling
Black (*Alberta*)	Jaffer
Black (*Ontario*)	Maltais
Boniface	Marwah
Bovey	Massicotte
Campbell	McCallum
Christmas	Mitchell
Cordy	Mockler
Cormier	Moncion
Coyle	Omidvar
Dawson	Poirier
Deacon	Pratte
Dean	Ravalia
Downe	Ringuette
Doyle	Stewart Olsen
Dupuis	Wallin
Gagné	Wetston
Gold	White
Harder	Woo—38

NAYS
THE HONOURABLE SENATORS

Andreychuk	MacDonald
Batters	Manning
Beyak	Marshall
Boisvenu	Martin
Carignan	McInnis
Cools	McPhedran
Dagenais	Mégie
Dalphond	Mercer
Day	Neufeld
Duffy	Ngo
Dyck	Oh
Eggleton	Patterson
Forest	Plett
Frum	Saint-Germain
Galvez	Seidman
Greene	Smith
Housakos	Tannas
Joyal	Tkachuk
Lovelace Nicholas	Wells—38

ABSTENTIONS
THE HONOURABLE SENATORS

Griffin	McIntyre—3
Lankin	

The Hon. the Speaker: Resuming debate on third reading of Bill C-46.

Hon. Mobina S. B. Jaffer: Honourable senators, I'm going to ask for permission to distribute a diagram along with the amendment when it's being distributed. May I get permission from the Senate to distribute the diagram at the same time?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Jaffer: Thank you very much.

Honourable senators, I rise today to speak on Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts. This bill reflects our government's desire to strengthen our impaired-driving laws and to increase the deterrence, conviction and detection measures for those who drive impaired by drugs or alcohol.

Taking a strong stance against impaired driving is a goal I support wholeheartedly. In Canada, drugs are present in fatal crashes twice as often as alcohol, and Canadians need an effective safeguard against impaired driving.

• (1740)

I support the goal of this bill because it protects the lives of Canadians, both on and off the road. However, Parliament and Canadians have established a framework in criminal law that distinguishes between offences based on seriousness. These categories are indictable offences, which are considered more serious, and summary offences, which are considered less serious.

Bill C-46 erases the lines between these categories and subjects all summary offences to serious and unintended consequences. It deals with all offences as if there were one category. It lumps all offences together. That is why I am tabling the amendment before you.

The amendment states:

> A conviction for an offence committed under subsection 320.14(1) or 320.15(1) does not constitute serious criminality for the purposes of subsection 36(1) of

the Immigration and Refugee Protection Act unless the person was sentenced to a term of imprisonment of more than six months in respect of that offence.

Subsection (1.1) expires two years after the day on which it comes into force unless, before then, the Minister extends its application for up to two years.

The Minister may, before the expiry of each extended period under subsection (5.1) extend the application of subsection (1.1) for up to two years.

Honourable senators, in our criminal justice system, we have established a framework that has been in operation for many decades. The framework differentiates between two main types of criminal offences: summary and indictable offences. As I have already mentioned, summary criminal offences are considered minor and are punishable by way of fines, and sometimes a prison sentence of less than six months.

Indictable offences are serious offences. They are punished more severely and can carry up to 25 years to life prison terms.

This criminal framework is the bedrock of our criminal justice system. We have relied heavily on this distinction for many decades, and we recognize that all new offences must fall within this framework so that Canadians can understand how the law will be applied and interpreted. For our courts, law enforcement and us Canadians, this criminal framework is an important part of our daily lives. When we see that a certain offence is summary or indictable, we understand what the punishment should be.

Unfortunately, Bill C-46 does not follow this criminal law framework.

Currently, a person convicted of impaired driving may face up to five years in prison. Bill C-46 increases punishments for driving under the influence to a maximum penalty of 10 years. This increase is significant and triggers unintended consequences under immigration law. Immigration law says very clearly that any crime punishable by 10 years is considered serious and triggers a provision called serious criminality, which leads to the person being deported. Serious criminality in the Immigration and Refugee Protection Act is reserved for those who commit heinous crimes like murder, sexual assault, crimes against humanity or acts of terrorism. It is reserved for indictable criminal offences because if a permanent resident is charged with an indictable offence, they will be deported.

Honourable senators, I agree that if a permanent resident commits a serious crime, he should be deported. In our country, we have made the decision under our immigration system that we welcome immigrants, but if they commit a serious crime, they should be deported. But that goes for indictable offences; it does not talk about summary offences. We are also a country that gives people who make a mistake another chance, as long as it's not a serious offence. If it is a serious offence, we all agree that person should be deported. What I am speaking about, this act doesn't deal with, which are summary offences.

However, because the government has raised the potential penalty for impaired driving to 10 years under Bill C-46, even summary offences committed by people will trigger serious criminality under the immigration act. This means that less serious offences that carry, for example, a simple fine or a short prison sentence will trigger the deportation of permanent residents.

Let me share with you an example which was shared with us at the Standing Senate Committee on Legal and Constitutional Affairs. Bill C-46 establishes various mandatory minimum sentences for impaired driving based on intoxication level. So a person who commits a first impaired-driving offence would be subject to a minor summary conviction and a fine of $1,000. Since we have raised the overall penalty to 10 years, even summary offences trigger deportation. This means, regardless of the sentence imposed, even if a discharge or fine was imposed, a citizen will face consequences and move on with their lives. A permanent resident will face the same consequences and will be deported.

I want to give you an example of a young man called Steven who came to Canada as a baby with his parents. However, when he arrived, his parents did not apply for citizenship for him. Many years later, he decided to apply for citizenship himself. Canada is practically the only home he has ever known and he wishes to proudly call himself a Canadian. Steven has been a pro-social and productive citizen. He finished school and college, he has a job and family, and he has never been in conflict with the law.

Unfortunately, even the best people can make mistakes. While he was waiting on his citizenship application, Steven was charged with impaired driving. He was not driving dangerously; there was no accident. It was an isolated incident. Due to the circumstances, the Crown elected to proceed with a summary conviction and the court imposed a fine of $1,000. Despite the fact that the Crown chose to proceed summarily and the court imposed the minimum possible punishment, Steven is now subject under Bill C-46 to serious criminality consequences, and he could face deportation to a country he doesn't even know.

If Bill C-46 passes in the current state, we will be taking the position that Canada would deport Steven to a country he has never lived in, to a place he may have no family and to an area where he may not be familiar with the language and culture.

Honourable senators, I want to make it clear that if Steven, as a permanent resident, had committed a serious crime, then he should be deported. But this is a case of a summary offence, and that is why I'm saying that Steven should not be deported. This is an unintended consequence of Bill C-46.

How can we punish as a summary offence but proceed as if it were indictable under immigration law? This is unprecedented. If someone commits any indictable offence, they should be deported, but we do not deport someone for a summary offence. That is what Parliament has decided many times.

Simply put, summary means summary; indictable means indictable.

Bill C-46 creates a system where the punishment does not fit the crime. It creates a system that recognizes that all impaired driving offences are not equal. It classifies them according to blood alcohol level or impact on others. However, despite this division, all permanent residents are subject to the worst possible punishment under immigration law, regardless of their circumstances, whether they have committed a summary offence or an indictable offence.

I know, honourable senators, you will also think that this is not right. This is not how we have set up our criminal system. Subjecting those who commit less serious summary offences to deportation is not consistent with our parliamentary framework of criminal and immigration law. This inconsistency has been recognized as unconstitutional, and if we don't rectify it, we will see the serious impacts in our already overburdened Federal Court system. The 10-year maximum sentence in Bill C-46 will worsen the unacceptable delays we see in the immigration system. It will also contribute to court delays in our criminal courts.

That is why I am raising this technical amendment before you. We have a clear choice before us. We can act now by adopting the amendment before us, or we can once again wait for our judiciary system to correct our error.

There may be some who will say this amendment has to be done under the Immigration and Refugee Protection Act. I say to them: When will that happen? What are the deadlines?

• (1750)

In the meantime, I absolutely can guarantee that no federal court is going to deport a person who has committed a summary offence. So what do we see? We already have the *Jordan* principle. Our courts are overclogged. Are we once again going to say, "Wait and see," or are we going to take action?

The amendment I am tabling will stop summary offences from triggering deportation. If both a Canadian and a permanent resident commit a minor first offence, both would receive the same proportionate consequence for their actions.

To be clear, this amendment ensures that if a permanent resident commits what Bill C-46 considers to be a minor offence, they will receive the associated penalty laid out in this bill — nothing more, nothing less.

On the other hand, if a permanent resident commits any indictable offence, their actions will subject them to being deported. I agree that they should be deported because we have set up a system in which, if you come to our country, you are welcome, but, if you commit serious crimes, you are not welcome. I stand by that. But that should not apply to summary offences.

The amendment further recognizes that driving under the influence is a significant problem and should be taken seriously. As such, I'm not proposing that we lower any penalties. I'm merely proposing that summary offences will not trigger the deportation of a permanent resident.

Honourable senators, just a few days ago, in this Senate, we passed a similar amendment. A similar amendment, which sought to rectify the same unintended consequences in Bill C-45, was adopted by the Social Affairs, Science and Technology Committee and by us here in the Senate. We accepted a similar amendment under Bill C-45. We accepted that amendment as we accepted that we felt the government had erred, and we, as the Senate, fixed it. The similar amendment in Bill C-45 that I'm talking about is:

> A conviction for an offence committed under section 9, 10, 11, 12 or 14 does not constitute serious criminality for the purposes of subsection 36(1) of the *Immigration and Refugee Protection Act* unless the person was sentenced to a term of imprisonment of more than six months in respect of that offence.

As we remember, honourable senators, the Social Committee recognized that these provisions were inconsistent and amended Bill C-45. As such, this amendment also exists for policy coherence between Bill C-46 and Bill C-45.

We go further in Bill C-46. My amendment goes further. Alongside this amendment, we will have a sunset clause of two years. Therefore, this amendment is not permanent. It simply signifies to the government that embedded within this legislation is an inconsistency between how we are labelling certain penalties and how we are punishing them. The sunset clause will give the government two years to recognize and deal with these inconsistencies. In the meantime, this amendment ensures that we are punishing according to the crime and not clogging the federal court system, which is already overburdened.

I am certain; I have no hesitation in telling you that I do not believe that our federal court system would ever deport a person like Steven, whom I was describing to you. That is the reason why I'm tabling this amendment. In Canada, in our framework, we should never deport somebody for committing a summary offence. That is something Parliament decided many years ago. It would not align with our Canadian values.

Honourable senators, if you give me the permission, I want to explain the chart that I have drawn. For me, this is really a technical argument, and I would like to explain to you visually what I'm saying.

The government has lumped together all criminal offences, whether they are summary or indictable. There is this lump on the top called "serious criminality." But, when it comes to punishment, they have separated them. They have said that summary offences are less serious than indictable, and they have set out separately summary offences where there is — may I have five minutes, please?

The Hon. the Speaker: Sorry, senator, but your time has expired. Are you asking for five more minutes?

Senator Jaffer: Yes.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Jaffer: The bill deals with it. It lumps all the offences together, but it separates the punishment. It says, for summary offences, there is a fine and a prison sentence of less than six months. Then, for indictable offences, there is up to 10 years of imprisonment, for example, for murder, acts of terrorism or treason.

Honourable senators, I stand before you and say that there is a lot of talk about us being the chamber of sober second thought. There is a lot of talk about us being different. These days, there's a lot of talk about how we are standing up to make things better for Canadians. I stand before you and say that if we really mean that, we should fix this. The government has erred, and it's our duty to fix it. Thank you very much.

MOTION IN AMENDMENT ADOPTED

Hon. Mobina S.B. Jaffer: Therefore, honourable senators, in amendment, I move:

> That Bill C-46, as amended, be not now read a third time, but that it be further amended in clause 15, on page 19, by adding the following after line 6:
>
> "**(4.1)** A conviction for an offence committed under subsection 320.14(1) or 320.15(1) does not constitute serious criminality for the purposes of subsection 36(1) of the *Immigration and Refugee Protection Act* unless the person was sentenced to a term of imprisonment of more than six months in respect of that offence.
>
> **(4.2)** Subsection (4.1) expires two years after the day on which it comes into force unless, before then, the Minister of Justice extends its application for up to two years.
>
> **(4.3)** The Minister may, before the expiry of each extended period, extend the application of subsection (4.1) for up to two years.".

The Hon. the Speaker: On debate, Senator Omidvar.

Hon. Ratna Omidvar: Honourable senators, I rise to support Senator Jaffer's amendment to Bill C-46 and to thank her for her work on this issue.

Let me start by saying that, like her, I believe that driving under the influence is a serious offence. I agree with the intent of Bill C-46 to take a stronger approach so that the mayhem on our streets and roads in Canada can be stemmed. No one should get behind the wheel if they are impaired from consuming alcohol or drugs. Should they choose to do so, then they should be caught and face the penalties that are specifically outlined in this bill.

I have no quarrel with the bill in this context. In fact, I support it.

However, Bill C-46 has an additional unintended, severe and disproportionate impact for permanent residents in Canada. Colleagues, just to remind you, every year, Canada permits 300,000 permanent residents to come into the country. Count that over three years, and you're looking at close to 1 million people. I believe that if any of these permanent residents break the law in terms of drunk driving, then they should pay the price like any other Canadian, because we cannot afford to jeopardize the lives of innocent people on the streets.

But I don't believe that permanent residents should bear an added punishment, not just another punishment, not just another fine, but a sledgehammer of a punishment of inadmissibility and deportation. This is exactly what Bill C-46 will do if we allow it to leave this chamber without this amendment.

To repeat parts of what Senator Jaffer has said so well, under the current law, not Bill C-46, a person convicted of general impaired driving, no bodily harm or death, could receive a maximum penalty of five years in jail. That offence, under IRPA, the Immigration and Refugee Protection Act, is considered to be ordinary criminality. Permanent resident status is, therefore, not put into jeopardy, unless they receive a sentence of more than six months, in which case it becomes a more serious offence.

Bill C-46 changes this. The maximum penalty moves from five to ten years, which then kicks DUI from ordinary criminality to serious criminality. Again, I have no quarrel with the penalties that are proposed in this bill. The Canadian Bar Association noted the consequences, though:

• (1800)

> By raising the maximum potential penalty to ten years and bringing these offences under "serious criminality", a single impaired driving offence in Canada, regardless of the sentence imposed, could cause a permanent resident to be issued a deportation order and lose their permanent residency status.

The Hon. the Speaker: Excuse me, Senator Omidvar. I apologize for interrupting you. Colleagues, is it agreed that we not see the clock?

Hon. Senators: Agreed.

Senator Omidvar: I am also going to use an example to illustrate this. Imagine a 19-year-old Canadian and a 19-year-old permanent resident. They are friends, they attend the same university and generally have fairly similar lives as young students. Let's call one Bob and the other Bilal. One night, Bob and Bilal both have one drink too many — I think we've all been there and can understand that — and make the terrible decision to get behind the wheel of a car. They are stopped by the police and given a Breathalyzer test, and they blow over the legal limit. No one is injured or killed, but since they blew over the legal limit, they are charged and then convicted, as they should be.

Bob, who is a young Canadian, gets his licence suspended and must pay a fine. Since this is his first offence under Bill C-46, he would pay a mandatory minimum fine of $1,000 or maybe $2,000, depending on how much alcohol he had in his system, and in all likelihood there may be no jail time.

Bob gets punished for his mistake, but he is able to resume his life. He will hopefully have learned his lesson, and he goes back to university and gets an education and a job. "Good luck, Bob," we say.

The law is pretty clear in this and other cases. It says that this was a bad decision, but it also says that there is room for rehabilitation. Bob made a mistake, but he can still set things right.

Bilal, on the other hand, also loses his licence. He also gets a fine. He doesn't get a jail sentence. He pays the fine, but now he is automatically inadmissible into Canada and could be deported. The choice to put his life back on the right track is simply not there for him, and yet the crime was the same.

He is faced with the awful reality of being deported, interrupting his education and his life. That is one very big double whammy. So we say to Bilal, "Goodbye, Bilal. *Hasta la vista, c'est la vie*, see you later."

Honourable senators, the amendment that Senator Jaffer has proposed is a very sensible one. It will not reduce the penalties for anyone who is charged with DUI. It will not provide special consideration or exemption of any kind for anyone who drives under the influence.

It will, however, remove the severe, harsh, unintended impact on just one class of residents. It is a measure that is respectful of the bill that we have before us and that we need to deal with the consequences of DUI.

Let me move on to an aspect of the amendment that speaks to the temporary nature of the amendment. Some senators believe and have argued that this change should be in the Immigration and Refugee Protection Act, and I don't argue with that. I'm not a lawyer, but I do know the Immigration and Refugee Protection Act, and let me tell you, colleagues, it is a beast of a particular kind. I don't know if there is a timetable, I don't know when it will be done, and, in the meantime, we have a community of potential first-time offenders who could be caught up in this way.

A compromise solution, therefore, is the proposal that is before you. It does not reduce the penalties for DUI. It does not provide any special consideration or exemptions for anyone.

The Senate, as Senator Jaffer has pointed out, has also approved a similar amendment to Bill C-45, and I think this brings a nice policy cohesion to what we are sending over to the other place.

I believe that after two years in this chamber I have a bit of a better sense of what my role is, and I'm not a lawyer. I'm surrounded by lawyers here, and I think it's wonderful we have them, but I do understand we are legislators. We give bills a thorough review. We catch errors where we find them. We catch errors when they're technical and consequential — I think this is both a technical error and a consequential error — and we ensure that Charter rights are protected. In fact, I think this is a perfect example of how and where we weigh in with sober second thought.

I would urge you to support this amendment because without this amendment Bill C-46 is not just seriously flawed, but we will be sending a very wrong message to the people of Canada.

Thank you very much.

Hon. Tony Dean: Would the senator accept a question?

Senator Omidvar: Perfectly, yes.

Senator Dean: Thank you, Senator Omidvar, together with Senator Jaffer, for explaining a very considerable, obvious and worrisome disparity.

The question does arise, though, senator, and you touched on it, as to why an amendment should be done here as opposed to in the IRPA. I wonder if you could tell us more about that.

Senator Omidvar: Thank you, Senator Dean, for that question.

It has come to me as a huge surprise that a gaping hole of this sort could be in legislation without being corrected first in the Department of Justice. It was not raised in the House of Commons committee because the members of the bar that were called did not speak to this. It was only raised when Bill C-46 arrived at the Legal and Constitutional Committee and I got called by a number of lawyers about the unintended impact. Frankly, it came to me as a huge surprise, and I think it has come to the government, honestly, as a surprise as well.

Here is a mistake, and this is a perfect example of what we do: fix mistakes that have a huge impact on people's lives, and not just one or two, as I said, but a huge community.

I hope that answers your question.

Senator Dean: Thank you, senator.

Hon. Peter Harder (Government Representative in the Senate): Colleagues, it has been my practice when appropriate to indicate to colleagues in the Senate the views of the government on matters before you vote, and it is in that spirit that I want to briefly speak today to indicate that the government does not support the amendment as presented and that this is not, from the government's point of view, an unintended consequence. It is the framework of the bill we have before us.

I want to speak briefly to that because I think the senators have accurately described what the amendment's intention is: It is to bring relief to those who are permanent residence holders from the consequences of the legislation as it presently exists with respect to the potential to be removed from Canada.

That does not avoid or otherwise prevent the remedies that are available to all permanent residents in terms of ministerial discretion and other measures that are part of our pre-removal process. I know that there are some who will say, "Well, but there is an inconsistency here with respect to the class of permanent residents that might be so affected."

I do want to point out, though, that there is also an inconsistency, should this amendment be adopted, with respect to those who are found guilty of serious driving offences that are not related to impaired driving, but serious criminality and the like.

So where do we want to draw the line for inconsistency? The government has chosen, as a policy matter, to draw the line where it has, and that is in respect of the treatment of serious criminal offences including those involving impaired driving.

• (1810)

The other perspective from the government has also been raised by the senators, and I give them credit for both their amendments and their speeches. It would certainly be the view of the government that amendments of the Immigration Act should be done through the Immigration Act, not through the Criminal Code, and that the inconsistencies which are always part of the balancing of an Immigration Act amendment process — having lived through a number of them as the deputy minister I can tell you it's not an easy process of balance — ought to be done wilfully and deliberately in the face of an amendment to the IRPA as opposed to the Criminal Code. And it is the view of the government that Bill C-46, as presented by the government, is the appropriate approach to deal with driving under the influence and impaired driving and that the consequences were not skipped but, rather, deliberately understood by the ministry and by the cabinet when they moved forward with this legislation.

I think it's important for all senators to understand that to govern is to choose, and this government has chosen, yes, a rather strict approach to impaired driving to reinforce the message of Bill C-46, which is that with impaired driving we ought to have robust tools, even though we have just removed the most important element of this bill in our previous vote.

Senator Jaffer: Senator Harder, I know it's not often you speak on the government's position and today you have. What is very interesting is at the Legal Committee I did ask government officials and they did not say what they said. You are not testifying. You are on debate here.

If there was a government position, there should have been witnesses at committee to say what you said. That's the right place because you're not a witness here, with all due respect.

An Hon. Senator: Question.

Senator Jaffer: You give the government's position, but I ask: Why are you giving the government's position here now and not at committee?

Senator Harder: Again, senators, I have frequently spoken about the government's position on various matters before the chamber, and I think it is only appropriate that all senators have that information before them as they choose how to vote. I do that with deliberation and with dispassion because it is important information to bring to the attention of all senators.

The Hon. the Speaker: Are senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: Sorry, Senator Omidvar, do you have a question?

Senator Omidvar: Yes.

Senator Harder, you have been Deputy Minister of Immigration, so you know about the beast that I'm talking about. Ministerial discretion — you raise the issue: "Oh, you get deported, fine; you can go apply for ministerial discretion."

Can you describe to us the exact process, the effort, the money that is required to get you from point A to a decision?

Senator Harder: Well, senator, I certainly have a better understanding of what it was 20 years ago. What I can tell you is that the ministerial discretion in the act is an important safe zone to assure that those caught in the unintended consequences in a serious way can be dealt with through ministerial discretion.

I do not for a minute think this is the last time we will be debating this matter. I do think that experience with this law may well cause policy debate with respect to the IRPA, but no matter where you draw the line there will be unintended consequences and somebody saying, "Well, the impaired driver who is a permanent resident is differently treated than for another offence."

In Bill C-46, this government is seeking to ensure, with respect to the criminal law, there is equal treatment.

Senator Omidvar: Senator Harder, would you think that a deportation order is a minor issue for an individual? Is it a serious life-changing decision that they would have to bear? Would you agree with that or say it's something people can cope with?

Senator Harder: Senator, obviously I would agree with that.

Hon. Leo Housakos: I have a follow-up question to Senator Omidvar. On ministerial discretion, can you tell us how many applications a year a minister would get before them and how many would a minister currently approve? My understanding is they receive requests in the thousands, but only a small number are actually granted.

Senator Harder: Senator, I don't have the statistics with me. What I can tell you, as you will know from your own work in this department, is that ministerial discretion and other recourse remedies in our system are important safeguards.

The Hon. the Speaker: Are senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: On debate, Senator Eggleton.

Hon. Art Eggleton: I find Senator Harder's intervention somewhat puzzling because this is a similar motion — certainly the first part — that was passed on Bill C-45 and he supported it. It came in the committee report and he supported the adoption of the committee report. He did not get up and make a similar kind of statement here that this is something that should be a change in the Immigration Act. And maybe ultimately it should, but getting changes in the Immigration Act is like pulling teeth. It's a very difficult thing to do. Meanwhile, this is going to go into effect very soon. To put people into the jeopardy of a double punishment, particularly an even more severe punishment than the act intends and the punishment that may be meted out by the courts, is a very unfair circumstance.

The provision here, as described by Senator Jaffer and Senator Omidvar, is to deal with cases that are a summary conviction that have a fine, maybe, or at maximum up to six months in prison. These are not serious criminality kinds of offences or punishment.

Now, driving under the influence can be a very serious matter, no doubt about it, but let the courts decide what is serious and what in fact is less than a very serious criminal activity. But if it comes within the category she suggests here, then I think it goes beyond reason, in examples that both senators gave, to expect that those double penalties are going to be applied here.

Until there is a change to the Immigration and Refugee Protection Act, I think it's appropriate to have it, just as it was appropriate to put it in Bill C-45. We adopted that in this Senate Chamber.

The Hon. the Speaker: Are senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Jaffer, seconded by the Honourable Senator Cordy, that Bill C-46 be not now read a third time — shall I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the yeas have it.

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on a bell?

Senator Plett: Thirty minutes.

The Hon. the Speaker: The vote will take place at 6:48 p.m.

Call in the senators.

• (1850)

Motion in amendment of the Honourable Senator Jaffer agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Black (*Alberta*)	Lovelace Nicholas
Black (*Ontario*)	Marshall
Bovey	Marwah
Cools	Massicotte
Cordy	McCallum
Cormier	McInnis
Coyle	McIntyre
Dalphond	McPhedran
Dawson	Mégie
Day	Mercer
Dean	Moncion
Duffy	Oh
Dyck	Omidvar
Eggleton	Poirier
Forest	Pratte
Frum	Ravalia
Gagné	Ringuette
Gold	Saint-Germain
Greene	Seidman
Griffin	Stewart Olsen
Housakos	Tannas
Jaffer	Wetston
Joyal	Woo—47
Lankin	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Maltais
Batters	Manning
Bellemare	Martin
Beyak	Mitchell
Boisvenu	Mockler
Boniface	Neufeld
Campbell	Patterson
Carignan	Plett
Dagenais	Smith
Deacon	Tkachuk
Doyle	Wallin
Harder	Wells
MacDonald	White—26

ABSTENTIONS
THE HONOURABLE SENATORS

Downe	Ngo
Dupuis	Pate—5
Hartling	

(On motion of Senator Martin, debate adjourned.)

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of our former colleague, the Honourable Wilfred P. Moore.

On behalf of all honourable senators, I welcome you back to the Senate of Canada.

Hon. Senators: Hear, hear!

ENDING THE CAPTIVITY OF WHALES AND DOLPHINS BILL

BILL TO AMEND—THIRD READING—
DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Gold, for the third reading of Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), as amended.

Hon. Patricia Bovey: Honourable senators, I rise today to add my support to Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), as amended.

It has been a long road and many tides, and we now near a decision at the final stage of our debate in the Senate. I begin by thanking Senator Sinclair for his sponsorship of Bill S-203 following the retirement of our colleague Senator Moore, who is in the gallery tonight. I also commend Senator Sinclair for his powerful and eloquent remarks in moving third reading. Thank you as well to Senator Christmas for his inspiring words yesterday and for his call for a decision, I hope, today. I would also like to thank members of the Senate Fisheries Committee, as well as Senators Manning and Gold for their handling of Bill S-203 at committee stage. I was at a number of those meetings.

Senator Sinclair told us about the scientific evidence presented at committee that the captivity of whales and dolphins is cruel in light of their characteristics and needs. We heard that Canada would join other countries in adopting a ban. We learned that Nova Scotia may become the home of the world's first open water sanctuary for orcas and beluga whales. Senator Sinclair described Indigenous support for Bill S-203, including the endorsement of the Coastal First Nations of British Columbia.

We heard about the several improvements made to the bill at committee following its 17 hearings. These changes included the addition of exceptions for keeping a cetacean captive for licensed scientific research or for its best interests. The committee also added a clause emphasizing that the bill does not affect Aboriginal or treaty rights.

Senators heard about the strong public support for ending whale and dolphin captivity in Canada. According to a recent Angus Reid poll, Canadians oppose whale captivity by a ratio of over 2 to 1. In Ontario, where almost all whale captivity occurs, the opposition is more than 3 to 1.

We heard about the petitions here, in the other place and online, and how when the bill's fate looked uncertain, correspondence from Bill S-203 supporters overwhelmed the Senate server. We heard it has been over 29 months since this bill's long swim began.

Honourable senators, our former colleagues Senators Janis Johnson and Elizabeth Hubley knew the right thing to do. So what are we waiting for?

• (1900)

Colleagues, nothing is more magnificent than seeing whales in the wild, either orcas, greys or dolphins, off the coast of my former home on Vancouver Island, or my native Manitoba's beluga whales swimming in Hudson Bay off Churchill, their young by their side. But nothing is more disturbing than seeing these kings of the ocean in pens being treated like circus animals. I have seen handlers brush orcas' teeth with large toothbrushes, and I honestly am not sure what that teaches us, our children or grandchildren.

I hope I speak for many in this chamber when I say that for Bill S-203 the case has been made. All that remains is for us to respect the democratic principle of this chamber and make a decision.

Senators, it is time for a vote. For this bill's many thousands of supporters in Canada and around the world, and most importantly for the whales and dolphins, I now call for a vote on Bill S-203. Thank you.

Hon. Scott Tannas: Honourable senators, I would like to speak on Bill S-203.

First of all, I would like to thank Senator Moore for bringing this bill forward. It has generated an enormous amount of discussion and has prompted action by the government through a bill that has been introduced that I'm sure we will see here eventually.

I have never met anyone with as big a heart as Senator Moore, and I had plenty of chances to see it in my first years as a senator. I watched him in action in the Aboriginal Affairs Committee, and I know of his genuine caring about this issue and many others.

Since Senator Moore introduced Bill S-203, I have followed the issue closely. My office conducted independent research on the matter, including talking to scientists and researchers, particularly at the Vancouver Aquarium, which, as a senator from the western division, the western 24, is in my region.

Over the course of the debates, I've kept in contact with the representatives from Vancouver Aquarium, and I continue to believe that there is much to lose with Bill S-203.

Colleagues, the list of marine mammals on Canada's Species at Risk Act is far too long and includes critically endangered populations of beluga whales, killer whales and right whales struggling to survive against multiple assaults of underwater noise, overfishing and ship strikes. Bill S-203 does nothing to help any of them. In fact, it only stands to inhibit our ability to conserve, protect and even save Canada's whales and dolphins.

The ones supporting Bill S-203 are not the ones doing anything tangible to save species from extinction. In fact, the bill will hurt those who have dedicated their lives to protecting them.

Colleagues, the Vancouver Aquarium is an established not-for-profit marine science centre that has contributed to groundbreaking conservation research for six decades. It is in accredited aquariums that we have learned about cetacean physiology, their mechanisms and interactions that operate within a living system. Team members at the Vancouver Aquarium have learned about their hearing and acoustic ability. They have learned about their diet and energetic requirements, lung mechanics and pulmonary function. They have tested field equipment such as hydrophones, mark-recapture bands and non-invasive attachments for satellite tags and cameras.

Research with animals at Vancouver Aquarium often carries on to the field. In the St. Lawrence Estuary, their scientists are measuring the acoustic communication of beluga whales to learn how we can mitigate the impact of underwater noise on that endangered population. Their scientists are studying the endangered killer whales using images taken from a drone to measure and assess changes in the whale's length and girth and to determine if they are getting enough fish to eat.

Accredited aquariums and zoos have a unique expertise that is needed to save species that are at risk. This is not the time to be phasing out facilities and expertise that can help wildlife in an unknown future. We have only begun to scratch the surface of what we can do with species survival programs, breeding programs, reintroductions and Headstarting projects for species at risk. Zoos and aquariums offer critical elements in these efforts that other stakeholders simply can't — space and skills. Around the world, accredited facilities have helped save species like the black-footed ferret, the California condor, and at the Vancouver Aquarium the Panamanian golden frog.

Vancouver Aquarium's marine biologists, veterinarians and scientists contribute to research on killer whales, narwhals, beluga whales, harbour porpoises, et cetera, because they have the necessary elements — veterinarians, biologists, husbandry experts and facilities — always trained and ready. Programs like these take time to develop and expertise is gained through experience.

The Vancouver Aquarium leads the only Marine Mammal Rescue Centre in Canada, and the Vancouver Aquarium is the only centre in Canada with a skilled team able to rescue stranded whales and dolphins. This is entirely due to their direct experience in providing care to cetaceans at the Vancouver Aquarium.

This aquarium has been saving whales and dolphins along B.C.'s coast for over 50 years. Their rescue centre is the only marine mammal hospital of its kind in Canada and now rescues, rehabilitates and releases more than 150 or more marine animals a year. These are wild animals that are found stranded and/or severely injured and are rescued under government permits.

Colleagues, there are provisions within Bill S-203 that will interfere with the good work of the Vancouver Aquarium, unlike Bill C-68, which the government is proposing and which many view as a fair and balanced approach that no doubt has been inspired by the work of Senator Moore.

But who are we here, in Ottawa, to reach across the country to a 60-year-old institution that has saved countless lives and developed a base of knowledge that we will never be able to replicate? I don't believe it's our job. So, I am going to move that we exempt the Vancouver Aquarium from this bill.

MOTION IN AMENDMENT

Hon. Scott Tannas: Therefore, honourable senators, in amendment, I move:

That Bill S-203, as amended, be not now read a third time, but that it be further amended,

(*a*) by adding the following after clause 6 (added by decision of the Senate on April 26, 2018):

"Exemption

7(1) Section 445.2 of the *Criminal Code*, section 28.1 of the *Fisheries Act* and section 7.1 of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* do not apply to a person whose name appears in the schedule to this Act.

(2) If the Governor in Council is of the opinion that it is in the public interest, the Governor in Council may, by order, add a name to or delete a name from the schedule.

(3) In determining whether it is in the public interest to add a name to or delete a name from the schedule, the Governor in Council must take into account whether a person

(a) conducts scientific research in respect of cetaceans; or

(b) provides assistance or care to or rehabilitates cetaceans."; and

(*b*) by adding the following schedule to the end of the Bill:

"**SCHEDULE**

(Section 7)

Designated Persons

The Ocean Wise Conservation Association (Vancouver Aquarium)".

• (1910)

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Tannas, seconded by the Honourable Senator Batters, that Bill S-203 as amended be not now read a third time — may I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: On debate, Senator Plett.

Hon. Donald Neil Plett: Honourable senators, I rise today to speak to Senator Tannas's amendment. I also want to welcome Senator Moore to the chamber.

I find it strange and rather unfortunate that we find ourselves in this situation in which we have been told today that we would be denied adjournment on this bill. The now sponsor of this legislation did not move third reading until over a month after the committee report was adopted by this chamber, and only the week before last. This was timed in conjunction with two film crews who are supporting this legislation being on Parliament Hill to film and document the occasion.

Colleagues, this was the day third reading was moved, and we were encouraged to let this legislation come to a vote on the same day, at which point I explained that we do not base our proceedings in this chamber on when film crews are here to help with their documentaries.

It is no secret that I have been opposed to this legislation since its inception. As a critic, I undertook to do my homework on this issue. Unlike the original sponsor of this bill, I thought it appropriate to at least speak with representatives of the two organizations who are affected, and I even visited both institutions. Again, this courtesy was not afforded by the previous sponsor and architect of this bill. I met with people on both sides of this issue, and it became very clear to me that this was a battle between activist and scientist, and that this was an activist-driven bill and nothing more.

Colleagues, as you know, the government introduced Bill C-68 in February. This was a carefully thought-out bill which directly addresses the issues we are facing. Bill C-68 bans wild capture of cetaceans, save for some circumstances surrounding injury and rehabilitation. But the government did not trample all over provincial jurisdiction by attempting to rewrite Ontario's animal welfare standards as this bill seeks to do. If the government wanted to go further or felt it was appropriate to go further, they certainly would have done so.

When Minister LeBlanc was here for Question Period, I raised this with him. I told him that I believed that Canadians support the principle of banning the wild capture of cetaceans. However, there are those, including the American activist who initiated this bill and, closer to home, Green Party leader Elizabeth May, who believed this measure should go much further, including preventing cetaceans from breeding while in human care and preventing reputable, state-of-the-art aquaria from ever displaying cetaceans.

On the flip side, our committee heard from acclaimed veterinarians, scientists and marine biologists who have said there is absolutely no danger to allowing these social animals to interact and to breed, nor is there any concern with allowing humans to view properly cared for cetaceans, especially as it has the ability to connect humans with cetaceans in such a profound way.

I asked the minister whether he believed that his government had struck the right balance. He indicated that, yes, he did believe the right balance was achieved, and the minister said he had consulted with colleagues in this chamber and in the other place regarding how to get this balance. He then stated:

> Since we were presenting amendments to strengthen and modernize the Fisheries Act, I thought one of the things we could do, certainly, is to put the intention of what Bill S-203 was seeking to achieve into the Fisheries Act.
>
> So we have done and allowed that.

He later raised the constitutional issue that I first raised at second reading, which, while it may be inconvenient for some, is unavoidable. The minister noted, and again I quote:

> A number of provinces — mainly the Province of Ontario, of course, with respect to Marineland — have jurisdiction with respect to some of the practices that take place there. I am conscious not to impede on provincial jurisdiction around animals that may currently be held at facilities like that.

Colleagues, many of the proponents of this bill, the American activists and a few Canadian activists, routinely cited Kiska and her poor health as a reason to suggest Marineland's care standards are subpar and that cetaceans in human care are inevitably suffering. Kiska is the sole orca in human care in Canada and has lived for years at Marineland. There has been no capture of an orca in our country since 1975.

Orcas have an average life expectancy of approximately 30 to 50 years, and Kiska is 41. The experts who testified at committee who have studied her well-being, including independent internationally recognized expert Dr. Lanny Cornell, said she is in great condition. Some of the activists pointed to dental decay as a sign of poor well-being. There is no evidence to support this claim. Kiska at her age is the equivalent to a human in their eighties. However, the housing of orcas in human care is a non-issue in the context of Canadian public policy. As I said, Canada banned the wild capture of orcas in 1975, and Kiska is the only remaining orca in human care in Canada.

Ontario's laws prevent Marineland from bringing in a partner for Kiska for socialization purposes, and every expert who has weighed in has said with certainty that Kiska will die if she is moved. Marineland's hands are tied. This cannot be disputed.

Some of these activists who have been touted as experts, many of whom are American activists, have stated on various occasions that whales, dolphins and even pigs should be given persons' rights under our law. Colleagues, these are radical activists.

Another activist who testified at committee, calling himself the Marineland whistle-blower, has admitted in court to taking drugs intended for marine mammals for his own personal consumption. The credibility of these star witnesses certainly needs to be considered when we weigh the evidence.

On the other hand, we heard from scientists and marine biologists about the benefits of housing cetaceans in human care for the well-being of cetaceans, for the research generated that can and has been applied to cetaceans in the wild, and the ability to connect cetaceans with humans.

Marineland is subject to routine surprise inspections. When the activists made unfounded claims about animal abuse of marine mammals to the Government of Ontario, the Ontario SPCA, the Niagara Falls Humane Society, independent experts from the Vancouver Aquarium, the Calgary Zoo experts, the Ontario Ministry of the Environment and Climate Change, the Minister of Labour for Ontario and an entire team of independent outside experts from the Government of Ontario all conducted investigations at Marineland.

As Senator McInnis pointed out, after the entire process, which took well over a year, not a single charge was laid by anyone in relation to any marine mammal at Marineland — not a single charge, colleagues. That is not an opinion. This is indisputable.

As is well documented publicly, Marineland is subject to routine unannounced inspections from the OSPCA's inspection teams. Every single animal was looked at, as were all the medical records and all of the facilities. No problems have been found — zero. Again, this is not an opinion; this is a fact.

Senator Tannas has already done a great job of explaining the outstanding work of the Vancouver Aquarium, but allow me to remind colleagues of the extensive process in Ontario that has already taken place and the regulations under which Marineland is covered. This proposed legislation has arisen out of and in direct response to a three-year legislative process in Ontario commencing in 2012, leading to new Ontario provincial legislation and regulation directly governing the care of marine mammals. This provincially enacted legislation rejects what is proposed by this bill.

After lengthy public debate in Ontario, including the creation of an independent and international scientific advisory panel and receipt of its comprehensive report, the creation of a technical advisory group composed of stakeholders from across the country and public hearings, provincial legislation has been passed in Ontario that expressly permits keeping marine mammals in human care and creates and implements stringent regulations regarding the care and treatment of marine mammals — some of the most stringent standards in the world, colleagues. That lengthy and full democratic process in Ontario over the course of three years specifically considered and rejected precisely what this bill now proposes to do.

The very arguments made in support of this bill were considered at length, studied and rejected in a thorough legislative and independent scientific review process in Ontario.

• (1920)

As I have stated before, what a small number of activists could not persuade the Ontario legislature to do, they now seek to persuade this Senate to agree to in this bill and impose on the entire country.

Not only is this bill constitutionally unsound, it also fundamentally represents a complete negative departure from over a century of integrated Canadian and international wildlife policy, and legislation that has guided every provincial and federal government since Confederation, and which today informs international treaties and efforts to preserve and protect our natural environment.

Colleagues, I will not go into all of the expert testimony that we heard at committee regarding cetaceans in human care, which is counter to the activists' claim. I will save that for another speech in which I will have more time. However, I will leave you with a couple of short quotes from Dr. David Rosen, a renowned marine biologist from UBC who stated unequivocally:

> . . . there is no scientific evidence the cetaceans inevitably suffer psychologically or physically by being held in well-maintained aquariums . . .

He also stated:

> . . . Canada's zoos and aquariums are among the most modern in the world. Canada is also a leader in coordinating global research efforts to improve the science of animal welfare.

Colleagues, this attack on these two renowned Canadian institutions is misplaced. The Ontario government's regulations, which we are now seeking to supersede, unconstitutionally, stipulate that appropriate light exposure, environmental enrichment programs and the guarantee of no harm to marine mammals in their contact with the public are paramount. Marineland adheres to all these standards unequivocally and unarguably. The Chairman of Niagara Falls Tourism testified in front of our committee and outlined the absolutely disastrous impact this would have on the economy of Niagara Falls. He mentioned that 54 per cent of rooms rented in the Niagara area in one year were because of visits to Marineland. There are 800 jobs on the line.

He stated, while pleading with our committee:

> Without Marineland, we would have some serious problems.

If this flawed legislation is to move forward with Senator Tannas's amendment, I believe it would be irresponsible and simply wrong to proceed without a further exemption for Marineland.

MOTION IN SUBAMENDMENT

Hon. Donald Neil Plett: Therefore, honourable senators, in amendment, I move:

> That the motion in amendment moved by the Honourable Senator Tannas be amended, in paragraph (*b*), by adding "Marineland of Canada Inc." after "The Ocean Wise Conservation Association (Vancouver Aquarium)".

The Hon. the Speaker: Question?

Hon. Jane Cordy: Would you take a question?

Senator Plett: Yes.

Senator Cordy: Senator Plett, you certainly have been consistent in your second reading speech, at committee hearings and now in speaking to Senator Tannas's amendment. I give credit to you for your consistency.

For those who are new to the Senate, this bill was introduced on December 8, 2015. That's two and a half years ago. Senator Moore has been retired for 17 months. I'm wondering, in the spirit of fairness, if this bill should at least be allowed to come to a vote. It did pass committee, and it came back to the chamber. Should we not as senators at least be allowed to vote on this bill, which was introduced by Senator Moore on December 8, 2015?

The Hon. the Speaker: Excuse me, Senator Plett, your time has expired. Are you asking for five minutes to answer questions?

Senator Plett: I'm not asking for it, but I'm certainly prepared to take five minutes and answer the question.

The Hon. the Speaker: Is leave granted, honourable senators?

An Hon. Senator: No.

The Hon. the Speaker: I hear a "no." On debate, Senator Ringuette?

Senator Ringuette: No, I'm sorry.

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question.

Senator Martin: I move the adjournment of the debate.

Some Hon. Senators: No.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on the bell? The vote will take place at 8:25 p.m.

Call in the senators.

• (2020)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Batters	McIntyre
Beyak	Mockler
Boisvenu	Neufeld
Dagenais	Ngo
Doyle	Patterson
Eaton	Plett
Frum	Poirier

Housakos	Seidman
MacDonald	Smith
Maltais	Tannas
Manning	Tkachuk
Marshall	Wells
Martin	White—27
McInnis	

NAYS
THE HONOURABLE SENATORS

Black (*Ontario*)	Hartling
Boniface	Jaffer
Bovey	Joyal
Cools	Lankin
Cordy	Lovelace Nicholas
Cormier	McCallum
Coyle	McPhedran
Dawson	Mercer
Deacon	Mitchell
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Dupuis	Omidvar
Dyck	Pate
Eggleton	Pratte
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Gold	Saint-Germain
Harder	Woo—32

ABSTENTIONS
THE HONOURABLE SENATORS

Griffin	Ravalia—3
Mégie	

• (2030)

Hon. David M. Wells moved:

That the Senate do now adjourn.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on the bell?

Senator Mitchell: Thirty minutes.

Senator Plett: One hour.

The Hon. the Speaker: One hour bell. The vote will take place at 9:31 p.m.

Call in the senators.

• (2130)

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Your Honour, with leave I would ask that we cancel the standing vote and have a voice vote instead.

The Hon. the Speaker: Is it agreed, honourable senators?

Some Hon. Senators: Agreed.

An Hon. Senator: We couldn't hear him.

The Hon. the Speaker: Honourable senators, Senator Mercer has asked that with leave of the Senate we cancel the standing vote and have a voice vote.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The question is as follows: It was moved by the Honourable Senator Wells, seconded by the Honourable Senator Plett that the Senate do now adjourn.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

An Hon. Senator: On division.

Senator Martin: Your Honour —

The Hon. the Speaker: Senator Martin, please, we are in the middle of a voice vote.

All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

An Hon. Senator: On division.

The Hon. the Speaker: On division. Accordingly the motion is adopted.

(At 9:32 p.m., the Senate was continued until tomorrow at 2 p.m.)

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